S. Hrg. 101-247, Pt. 4B

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE WALTER L. NIXON, JR.

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON, JR., A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, FOR HIGH CRIMES AND MISDEMEANORS

PRIOR RECORD ADMITTED INTO EVIDENCE:
HOUSE OF REPRESENTATIVES IMPEACHMENT INQUIRY

Part 4B of 4 Parts

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JUDGE WALTER L. NIXON, JR., IMPEACHMENT INQUIRY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H. RES. 407, IMPEACHING WALTER L. NIXON, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, FOR HIGH CRIMES AND MISDEMEANORS

JUNE 9, 10, JULY 6, 7, 8, AND 12, 1988

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JUDGE WALTER L. NIXON, JR., IMPEACHMENT INQUIRY

THURSDAY, JUNE 9, 1988

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Members present: Representatives Edwards, Sensenbrenner, DeWine, Schroeder, Kastenmeier, and Conyers.

Staff present: Catherine A. LeRoy, counsel; Alan Baron, special counsel; Pamela J. Naughton, assistant special counsel; Peter Keith, assistant special counsel; D. Christopher Ohly, assistant special counsel; Daniel M. Freeman, parliamentarian; and Alan M. Slobodin, associate counsel.

Mr. **Edwards**. The subcommittee will come to order.

The Chair recognizes the gentlewoman from Colorado.

Mrs. **Schroeder**. Mr. Chairman, I ask unanimous consent that this meeting be permitted to be covered by media pursuant to Rule 5 of the Committee Rules.

Mr. **Edwards**. Without objection.

Mr. **Sensenbrenner**. Reserving the right to object, I would ask whether the unanimous consent request applies to today's meeting or to all meetings of the subcommittee.

Mrs. **Schroeder**. I think we usually do it day by day. That has been the committee's practice.

Mr. **Sensenbrenner**. Further reserving the right to object, I have no objection to making it blanket authorization for all the subcommittee meetings relative to this issue.

Mr. **Edwards**. Will the gentlewoman change her request to all of the meetings?

Mrs. **Schroeder**. Certainly.

Mr. **Sensenbrenner**. I withdraw my reservation.

Mr. **Edwards**. Without objection, it is so ordered.

Today, the subcommittee begins its inquiry into whether United States District Judge Walter L. Nixon, Jr., should be impeached. It is not a task we welcome, but it is a unique function which is entrusted to us by the Constitution. We have no alternative when significant allegations of judicial misconduct are brought to our attention.

Article I, Section 2, Clause (5) of the Constitution vests sole power of impeachment in the House of Representatives. Article II, Section 4, states that "All civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors."

On February 9, 1986, Judge Nixon was convicted of two counts of having made false statements to a Federal grand jury. On March 31, 1986, he was sentenced to five years in custody as to each count, the terms to run concurrently.

On April 30, 1987, the Fifth Circuit of Appeals confirmed his conviction. On January 19, 1988, the United States Supreme Court denied Judge Nixon's petition for a writ of certiorari.

On March 15, 1988, the Judicial Conference of the United States certified to the Speaker of the House of Representatives the findings of the Judicial Council of the Fifth Circuit stating that Judge Nixon had engaged in conduct which might constitute one or more grounds for impeachment.

On March 17, 1988, House Resolution 407 was introduced, calling for Judge Nixon's impeachment for high crimes and misdemeanors. On March 18, 1988, Judge Nixon was informed of the resolution and that hearings were planned in the near future. On March 22, 1988, Chairman Rodino referred the resolution to this subcommittee for hearings.

These proceedings do not constitute a trial in any sense. The constitutional power to try impeachment resides in the Senate, not in this body. The rules of evidence are inapplicable to these proceedings. This inquiry will focus on whether or not Judge Nixon gave false testimony. Matters not pertaining to that issue are not relevant to this hearing.

The purpose of these hearings is to develop a record upon which the subcommittee can recommend whether or not to adopt articles of impeachment. In order to develop that record, the subcommittee will call witnesses and admit documents that go to the merits.

Toward that end, the subcommittee has invited Judge Nixon to testify and his counsel to participate in the hearings and offer exhibits. The subcommittee intends to conduct fair, open, and complete hearings, and will approach this matter with the seriousness and thoroughness required by the Constitution.

The subcommittee has received correspondence from Judge Nixon's counsel addressing the procedures to be followed on this hearing, and the subcommittee has decided the following. One, Judge Nixon has requested the opportunity to make a brief opening statement on his behalf. This statement will be permitted, will be under oath, and will take place at the outset of this proceeding.

Judge Nixon has also requested that he not be exposed to questioning by members of the subcommittee or by special counsel following his statements, and has indicated that he will decline to testify if questioning is permitted.

The subcommittee is deeply concerned about Judge Nixon's refusal to respond to questions, since obviously this would be of great value to us in assessing his position in this matter.

However, in the interests of fairness, the subcommittee is prepared to hear from Judge Nixon on the terms he requests, with his refusal to respond to any questions that might be posed by the subcommittee or special counsel made part of the record of this proceeding.

Two, Judge Nixon's counsel has requested one hour and 50 minutes to make a presentation to the subcommittee. Although we generally do not hear oral advocacy and have already received lengthy written statements, again in the interests of fairness, the subcommittee will permit Mr. Stewart to present argument. At Mr. Stewart's request, this presentation will not be under oath and will not be in any way construed as testimony of a fact witness, but rather as an advocate arguing his client's cause. The subcommittee will question Mr. Stewart during his presentation if we are so inclined.

Three, Judge Nixon has requested the subcommittee to summon at least four witnesses. We are advised that the first witness, Reid Weingarten, will appear and testify. After Mr. Weingarten has completed his testimony, counsel for Judge Nixon will be permitted ten minutes to question the witness and may thereafter seek additional time at the discretion of the Chair.

With regard to the other three witnesses, the subcommittee is advised that Tom Brennan, the former Mississippi newspaper reporter, testified under oath at proceedings held in connection with Judge Nixon's motion for a new trial following the jury verdict.

The subcommittee is making the entire trial transcript, including post-conviction matters, part of the record before us. Thus, Mr. Brennan's testimony is already before us and no personal appearance by this witness is necessary.

The third witness sought by Judge Nixon, Fred Strasser, also a newspaper reporter, would give only cumulative testimony, according to Judge Nixon's proffer. Accordingly, the subcommittee sees no reason to hear from Mr. Strasser.

Finally, the fourth witness, Joe Denson, has been convicted of felony bank fraud charges and will shortly be incarcerated. The subcommittee is prepared to accept Mr. Stewart's proffer of his testimony in lieu of his personal appearance.

Should counsel for Judge Nixon request additional witnesses or wish to submit additional affidavits or other materials, the subcommittee will, of course, consider such requests.

Finally, the subcommittee reminds Judge Nixon and his counsel that this is not a trial. No objections or other interruptions in the testimony will be permitted. Furthermore, counsel is reminded that the scope of this inquiry is limited to whether Judge Nixon lied under oath and his fitness to remain on the bench, and questions and argument by counsel should focus on that issue.

I now yield to the ranking minority member of the subcommittee, the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Let me say that I am in full accord with the statements that the Chairman has made both in opening the hearings as well as setting forth the rules of procedure and the order of testimony, and let there be no doubt sown in anybody's mind that there is a partisan disagreement on either of those particular items.

There are some problems with scheduling the subcommittee, and rather than take the time of the subcommittee at this point in time, let me say that unless those problems of scheduling subcommittee meetings not only on this question, but on other questions, are resolved next week when the House will be considering much legislation under the five-minute rule, the subcommittee will not be granted permission to sit.

Mr. EDWARDS. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I do not have any opening statement.

Mr. EDWARDS. The gentleman from Ohio, Mr. DeWine.

Mr. DEWINE. I have no opening statement, Mr. Chairman.

Mr. EDWARDS. The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Mr. Chairman, I have no opening statement.

Mr. EDWARDS. I would like to introduce the special counsel, Mr. Alan Baron; on his right, associate counsel, Pam Naughton. Peter Keith is on the left of Mr. Baron, and on the extreme right is associate counsel Chris Ohly.

Mr. Stewart, would you introduce your associates and colleagues?

Mr. STEWART. Thank you, Mr. Chairman. I am David Stewart, here for Judge Nixon. I am accompanied by Boyce Holliman, from Gulfport, Mississippi; my colleague, Jay Alexander, from my law firm; and Mrs. Nixon is with us as well.

Mr. EDWARDS. I believe that the first item will be Judge Nixon's opening statement in his behalf. Judge Nixon, are you prepared to make an opening statement?

Judge NIXON. Yes, Mr. Chairman, I am.

Mr. STEWART. Mr. Chairman, might I clarify a couple of things first, just procedural matters, if the Chair would hear them?

Mr. EDWARDS. Will you state them, Mr. Stewart?

Mr. STEWART. First, we have tendered a great many exhibits; I think it is over 40. Is this a proper time to consider whether they have been received or not? I just need to know when I am questioning a witness if that is an exhibit that is in the record.

Mr. EDWARDS. They have been received, Mr. Stewart.

Mr. STEWART. OK, and I did also want to make clear, and I have mentioned to staff, that we have an additional witness we have tendered an oral proffer on, and that was this morning with respect to an issue that was raised to me for the first time last Friday.

We have been moving rather quickly and scrambling around a little on this and I hope we will be able to get some ruling from the subcommittee as to whether——

Mr. EDWARDS. The subcommittee will give you a prompt ruling on that, Mr. Stewart, before the end of the day, I am sure.

Mr. STEWART. Thank you.

[Witness sworn.]

Mr. EDWARDS. You may proceed.

TESTIMONY OF THE HONORABLE WALTER L. NIXON, JR.

Judge NIXON. Thank you.

Mr. Chairman, members of the subcommittee, although I surely have never aspired to face impeachment by Congress, I find that I now welcome this opportunity to appear before the subcommittee, and I welcome and appreciate the subcommittee's inquiry into my case.

The matters before the subcommittee are grave and difficult both me and for our system of government. Upon discovering that a Federal judge is serving time in prison, a natural reaction is that something is wrong; that a man in prison should not be a Federal judge.

I agree that something is wrong with this situation, but what is wrong is that I am in prison even though I have committed no crime. If I believed for a moment that I had committed a crime, I would have resigned as a judge and this hearing would not be necessary.

Above all things in this world, I value the integrity of the Federal judicial system and the men and women who serve as its judges. I have served—it will be 20 years next month. I would do nothing, and have done nothing, to call into question the integrity of the bench.

My loving family and I have endured a great deal over the last several years—our peace of mind, damage to my reputation, and now my freedom. But we have not lost faith that in the end justice will prevail and my innocence will be understood and recognized. Nor has our faith in God ever waned or diminished.

Thus, I appear here today, quite frankly, seeking vindication. I know that it is difficult to look beyond the fact of my convictions and the underlying facts of this case, which are sometimes confusing, but I have great faith that all Members of Congress will have the diligence, the commitment to duty, and the courage to do so, and to do so with an open mind.

As important as this proceeding is to me personally, it is just as important to protecting the independence of the judiciary and preserving our three coequal branches of government.

The investigation of my case was begun based on false premises and was pursued for the wrong reasons. From the beginning, the goal was to get the judge—the big prize, as the complaining witness, Jarvis, stated it to the FBI in written correspondence which is a part of the exhibits in this case—and to do that no matter how thin the evidence.

The prosecutors were committed to convicting on any available charges, and I sincerely state to you that the charges on which I was convicted were not proved at trial. Only by confusing the jurors with clearly insupportable charges was the prosecution able to achieve the compromise verdict by which I was convicted.

In my view, this case has set an extremely dangerous precedent by intimidation of the Federal judiciary. The courts must be fearless, applying justice even-handedly to all; that is, all parties before them.

The Executive Branch can have no greater claim than any other litigant on the court's goodwill, fairness, and even-handed justice. I have no doubt that this case will leave judges looking over their shoulders for the prosecutor.

Throughout my life, I have tried to serve my country and my community. It causes me great pain to think that my record of public service has been marred and my personal honor has been questioned.

As a judge, I know how important it is that an oath be respected by witnesses. I have tried fairly and honestly to answer every question put to me in this case, whether or not I was under oath at the time.

I know in my heart that at no time have I intentionally made a false statement in this case, and I only hope that we can persuade you of that in our presentation today and in the materials that we have submitted.

My wife, my children, and I plead for your careful, fair, and open-minded consideration of this, our supplication.

Thank you very much for giving me the opportunity to speak to you today.

Mr. **Edwards**. Thank you very much, Judge Nixon.

Our first witness is Reid Weingarten, formerly of the Public Integrity Section of the United States Department of Justice. Mr. Weingarten was prosecutor in the case which resulted in Judge Nixon's conviction. Mr. Weingarten is now in private practice.

[Witness sworn.]

Mr. **Edwards**. Mr. Weingarten will be questioned by special counsel Alan Baron.

Mr. **Baron**. Thank you, Mr. Chairman.

Good afternoon, Mr. Weingarten.

TESTIMONY OF REID H. WEINGARTEN

Mr. **Weingarten**. Good afternoon.

Mr. **Baron**. Mr. Weingarten, you were, in fact, the prosecutor in the case of *United States* versus *Judge Nixon*?

Mr. **Weingarten**. I was one of the prosecutors; I was the lead prosecutor.

Mr. **Baron**. And you handled the investigation leading up to the prosecution?

Mr. **Weingarten**. Yes.

Mr. **Baron**. And you also handled the appeal subsequent to the conviction, is that correct?

Mr. **Weingarten**. It is correct.

Mr. **Baron**. All right. May I ask you first to give the members of the subcommittee an overview of the various procedural stages of the indictment, conviction, and appeals involving Judge Nixon?

Mr. **Weingarten**. OK. An indictment was returned by the grand jury in the Southern District of Mississippi on August 29, 1985, naming Judge Walter Nixon as defendant. The indictment contained four counts.

The first count alleged was a violation of 18 United States Code 201(g), a gratuity statute, and the next three charges were perjury counts. There were pre-trial motions argued.

Trial began on January 21, 1986. The trial lasted until February 9th, 1986. The jury returned a verdict of not guilty on the gratuity charge, not guilty on one of the perjury charges, and guilty on two perjury charges.

Post-trial motions were filed. A hearing was held by the trial judge, Judge Meredith, in Hattiesburg, MS, on March 28th and March 29th, 1986. The post-trial motions filed by Judge Nixon were denied.

Mr. **Baron**. Judge Meredith—excuse me for a minute. Judge Meredith came from outside the district to try this case?

Mr. **Weingarten**. Yes. He was assigned the task of trying this case by the chief justice.

Sentence was imposed by Judge Meredith on March 31st, 1986. Following sentence, Judge Nixon took an appeal.

Mr. **Baron**. What were the sentences?

Mr. **Weingarten**. The sentence was five years' incarceration on both counts, to run concurrently.

Judge Nixon filed an appeal to the Fifth Circuit. Argument was had before the Fifth Circuit on the case and his appeal was denied unanimously. Following his appeal, he filed a petition for rehearing and a petition for rehearing en banc before the Fifth Circuit. Both petitions were denied, and finally Judge Nixon sought cert in the Supreme Court and his petition for cert was denied on January 19th, 1988.

My understanding is he has been incarcerated at Eglin Air Force Base since March 23rd, 1988.

Most recently, there is an outstanding petition for habeas corpus that has been filed before Judge Nangle. My understanding is Judge Meredith is ill, is not able to handle the petition for habeas corpus, and a new judge has been assigned.

My understanding, although I'm not completely sure I have all the up-to-date information, is that that petition is now under advisement or is being considered by Judge Nangle.

Mr. **Baron**. That summarizes the procedural steps in the case?

Mr. **Weingarten**. Yes.

Mr. **Baron**. All right. Could I now direct your attention—the subcommittee wishes to hear from you to summarize the facts of the case, the proof that was adduced at both the trial and at various steps along the way in the course of the investigation.

Mr. **Weingarten**. I think perhaps the best way to start is to state——

Mr. **Baron**. I'd ask you also to slow down a little bit because we want to have a chance to absorb your testimony as it is proffered.

Mr. **Weingarten**. I'll do my best.

Probably the most fruitful way to begin would be to state that two factual issues dominated this matter from the outset through the investigation and through trial, and these two issues were central to an understanding of Judge Nixon's perjury convictions, in my opinion, and the issues were as follows.

First, was there an effort by Judge Nixon to influence in any way the handling of a drug case in Hattiesburg, MS, involving an individual named Drew Fairchild? And the second issue would be what was Judge Nixon's economic relationship with Drew Fairchild's father, a Mississippi oil man named Wiley Fairchild, and more specifically whether or not Wiley Fairchild provided Judge Nixon with illegal gratuities in the form of mineral interests.

The overarching question that connected these two issues was whether or not these two matters ever came together factually.

I think a logical place to start would be with the Drew Fairchild drug case. On August 4th, 1980, an airplane landed at Hattiesburg Airport, a small airport outside the town of Hattiesburg. It was loaded with over 2,000 pounds of marijuana and it was apprehended on the ground by law enforcement officials. Three people were arrested at the scene.

It became immediately apparent—if not immediately apparent, apparent very soon after the bust—that the airport managers were involved in this scheme. One of the airport managers was Drew Fairchild.

A few weeks after the bust, an indictment was returned in Federal court in Jackson, Mississippi, naming three individuals as defendants. Drew Fairchild was not named as a defendant at that time. He was apprised, nevertheless, that he was implicated in this scheme.

Drew Fairchild sought the counsel of the local district attorney in Hattiesburg, an individual named Bud Holmes. Bud Holmes advised Fairchild and his lawyer, a man named Porter, to make contact with the United States Attorney's office in Jackson. They did so.

There was plea negotiations and a memo of understanding was reached between the United States and Drew Fairchild on November 19th, 1980. In sum, the memo of understanding required Fairchild to cooperate completely with the United States, to plead guilty to a drug felony, and in return he would receive probation and would be fined a substantial sum.

Shortly after the memo of understanding was reached, United States law enforcement officials concluded Fairchild was not being cooperative, was not honoring the terms of the agreement, and they considered the agreement breached and intended to prosecute Drew Fairchild.

After the memo of understanding was reached and breached, Fairchild's lawyer, this man Porter, sued Drew Fairchild for Fairchild's failure to pay his legal fees. In addition to that, he complained to his friend Holmes, the local district attorney.

This prompted the district attorney to call the United States Attorney in Jackson and make inquiry about the case, with the intention of trying to bring the case back down to Hattiesburg for him to prosecute.

Mr. BARON. That would be a transfer from Federal jurisdiction to State jurisdiction?

Mr. WEINGARTEN. Yes.

The United States Attorney in Jackson was flooded with work and was only too happy to rid himself of another case and was of a mind that the case could properly be handled locally, so he acceded to the request of the district attorney. The prime motivation for the district attorney was to allow his friend Porter to collect his legal fee.

In the summer of 1981, a State indictment was returned naming Drew Fairchild as defendant. In addition, there was one outstanding participant in the drug scheme, a man named Watkins, who was the pilot, who had not been handled Federally. He, too, was indicted in State court.

In December 1981, Watkins, who had been fugitive up to that point, was apprehended. Holmes approached Fairchild and gave Fairchild an opportunity to plea bargain. A plea bargain was reached. On January 12th, 1982, Drew Fairchild pled guilty to a State drug charge and, in return, promised to cooperate against Watkins.

Pursuant to the plea agreement, Fairchild would be fined $5,000 and would do no time. Rather, he would receive probation.

A few months later, in May 1982, Watkins again becomes a fugitive. Drew Fairchild's case, meantime, is never finalized; he is never sentenced. In October 1982, Watkins is apprehended again.

On December 23rd, 1982, Bud Holmes files a motion, a motion that is granted, that the Drew Fairchild case be passed to the file. This is a Mississippi procedure wherein the case is sent to the inactive list. This——

Mr. **Baron**. Had any motion been filed on Drew Fairchild's behalf to get the district attorney, Holmes, to do that?

Mr. **Weingarten**. No. This request was not anticipated by Fairchild; it was not requested. The prosecutor in Holmes' office who was actually handling the Drew Fairchild case was shocked that Holmes had done this. Another prosecutor in the office who was familiar with the facts later testified that some of the reasons Holmes used to pass the case to file were false.

Thirty-three days later after the case had been passed to file, the case was brought back from the file. Holmes later testified that one of the reasons he did this was that he received bad publicity and bad information from the community because of his passage of the case to file.

I think it's useful at this point to move from the Drew Fairchild case to the economic relationship between Wiley Fairchild and Judge Nixon. There came a time when Judge Nixon expressed dissatisfaction to people with his judicial salary. He talked to individuals about making investments.

One of the people he talked to was a prominent southern Mississippi lawyer named Carroll Ingram. He approached Ingram about investments with Wiley Fairchild, who was a millionaire, or who is a millionaire in southern Mississippi and has a tremendous amount of mineral interests.

Judge Nixon singled out Wiley Fairchild, according to the testimony of Carroll Ingram. He did not know Wiley Fairchild, but nevertheless approached Ingram about making an investment with Fairchild.

Mr. **Baron**. Can you give us a time frame on this? You left off—the Drew Fairchild line of your testimony was in roughly December of 1982 or January of 1983. What is the time frame that you are picking up the thread with regard to Judge Nixon's relationship with Wiley Fairchild?

Mr. **Weingarten**. The testimony at trial, and specifically from Ingram, is that Ingram was first approached by Judge Nixon in 1979.

Mr. **Baron**. So we're going back in time now?

Mr. **Weingarten**. Yes.

Judge Nixon had discussed Wiley Fairchild with Bud Holmes. Bud Holmes advised Judge Nixon that Wiley Fairchild had a reputation for getting close to people in power, people like governors, and Bud Holmes had advised Judge Nixon—and I should preface this by saying Bud Holmes and Judge Nixon were very close friends. Bud Holmes advised Judge Nixon that an investment with Fairchild would be very, very safe.

Mr. **Baron**. Now, this information you are now telling us was adduced in sworn testimony at trial?

Mr. **Weingarten**. Yes.

Mr. **Baron**. OK.

Mr. **Weingarten**. Ingram testified that the request from Judge Nixon put him on the spot. He wasn't happy about it. He delayed approaching Fairchild. As a matter of fact, he went so far as to avoid Judge Nixon's telephone calls, which he anticipated would include conversation about Judge Nixon's requested investment with Wiley Fairchild.

Finally, he did approach Wiley Fairchild and asked Wiley Fairchild to put Judge Nixon in a good deal. Wiley Fairchild was delighted to oblige. Wiley Fairchild saw Judge Nixon as an influential man who could help him in the future.

Wiley Fairchild was not in the business of selling mineral interests.

Mr. **Baron**. Did Wiley Fairchild ever testify or make a statement to the effect that he saw Judge Nixon in the light in which you have just mentioned?

Mr. **Weingarten**. Frequently. He testified to that in the grand jury and interviews, and I believe at trial.

Mr. **Baron**. OK.

Mr. **Weingarten**. Wiley Fairchild selected the mineral interests that eventually went to Judge Nixon. There were no negotiations between the two men. He selected three mineral interests in his portfolio to ensure profit to Judge Nixon.

By the nature of the relationship, any profit that Judge Nixon would have accrued in this relationship necessarily would have come out of Wiley Fairchild's pocket because these interests were Wiley Fairchild's.

On February 25th, 1981, Wiley Fairchild gave an instruction to one of his employees, an individual named Skip Jarvis. He instructed Jarvis to prepare three one-acre overriding royalty interests, and specified that the grantee was to remain in blank. He also instructed Jarvis that once these documents were prepared to send them to Carroll Ingram.

Skip Jarvis received these documents back from Ingram with new instructions. The instructions were to increase the acreage per mineral interest and to back-date the documents one year. Wiley Fairchild testified that Ingram instructed him to do that to make the documents look better.

By the nature of the mineral interests, the grantee was to get money from the production, from the time of production. So the back-dating of the documents would have no effect on the actual money that Judge Nixon would receive.

Wiley Fairchild estimated at the time of the transfer of these mineral interests they were worth a combined total of $26,000 to $28,000. At trial, an expert testified for the Government that in February of 1981, the three mineral interests were worth approximately $53,000, and that one year prior to that they would have been worth $21,000, the difference being in 1980 they were further away from production. In 1981, of course, they were closer to production.

Judge Nixon had an individual testify at trial who was in the business of buying and selling mineral interests, and he opined that the value of the mineral interests were the same in 1980 and 1981, approximately the amount of money that Judge Nixon paid for them.

Mr. **Baron**. How much was that?

Mr. **Weingarten**. Fairchild testified at trial that he was ignorant of the preparation of the notes, had nothing whatever to do with them. He testified, though, that he didn't object to the notes because he didn't want the transfer to look like a hundred-percent gift.

Mr. **Baron**. Not look like a hundred-percent gift. Are you quoting Wiley Fairchild——

Mr. **Weingarten**. Yes.

Mr. **Baron**. —or is that your paraphrase?

Mr. **Weingarten**. Well, the quote I have written down, "He didn't want it to look like a hundred-percent gift." My recollection is that's what he testified to at trial.

At one point in the course of these events, Fairchild and Judge Nixon met. Judge Nixon thanked him for putting him in a deal and he advised Wiley Fairchild—and again I'm quoting—"If I can help you, I will. If I can't, I'll just tell you I can't," and that is pursuant to Wiley Fairchild's testimony.

At the time of trial, about $60,000 had gone to Judge Nixon pursuant to this deal. The wells were expected to produce another 12 to 20 years. Two of the wells proved to be very productive. One of the wells did not.

The $9,500, the total of the three notes, paid back after the royalties were received by Judge Nixon in greater amounts. Initially, Judge Nixon only paid interest back to February 25th, 1981, the time when Skip Jarvis first prepared the overriding royalty interests.

After the investigation began, he paid interest back to Wiley Fairchild back to the back-dated date, February 25th, 1980.

Following these events, Judge Nixon and Wiley Fairchild had further discussions——

Mr. **Baron**. Excuse me one second. The source of the moneys which paid back—paid the interest and paid back the notes—was Judge Nixon paying that out of pocket or did it come out of the revenues generated by the oil leases?

Mr. **Weingarten**. I think the evidence reflected that the moneys were only paid back when Judge Nixon had received royalty interests of a greater amount.

Judge Nixon and Wiley Fairchild had further discussions about more oil interests. These discussions would have taken place in October 1982. My recollection of the evidence is that they took place in a bar, a restaurant that Bud Holmes owned on an occasion when the legal community and the community of Hattiesburg were celebrating Judge Nixon becoming the Chief Judge of the Southern District of Mississippi. Wiley Fairchild had identified a well that he was prepared to transfer to Judge Nixon and ultimately decided against it because the well did not prove to be profitable.

At some point in 1982, Wiley Fairchild testified that he became concerned and aggravated as to how his son's case was proceeding.

Wiley Fairchild—much aggravation came to Wiley Fairchild because of this case, as he testified, caused by a number of things.

One, there was a lot of publicity on this case locally and Fairchild did not appreciate his family name being dragged through the mud in connection with this drug case. In addition, he was concerned that he had heard rumors around town that he had paid bribes to see to it that his son did go to prison.

And, finally, he was very agitated that Drew Fairchild's partner at the airport, the comanager, an individual named Royals, had not been prosecuted. He had not been prosecuted by Holmes and he had never been prosecuted by the Federal Government.

This particularly enraged Fairchild because Royals had approached Fairchild and advised Fairchild that if he got off his money, if he made payments seemingly or presumably to the lawyer Porter, that his son Drew would not have a problem. Fairchild viewed this as nothing less than extortion.

He contacted———

Mr. BARON. Can I ask you again to slow down your testimony a little bit?

Mr. WEINGARTEN. Sorry.

Mr. BARON. Everybody is trying to absorb it as you're going.

Mr. WEINGARTEN. Sorry.

Fairchild at this point in time specifically wanted Holmes to take care of his son's case, as Holmes had promised. He wanted the end of it. He sought out Judge Nixon at this time because of the judge's previous offer to help him if he could.

Mr. BARON. Now, whose testimony was this?

Mr. WEINGARTEN. Wiley Fairchild.

Mr. BARON. OK.

Mr. WEINGARTEN. And he knew that Judge Nixon and Bud Holmes were very good friends. The evidence established that Judge Nixon visited Fairchild in his office in Hattiesburg and the two men had a 15 or 20-minute meeting. Fairchild told Judge Nixon about his son's agreement with Holmes, according to Fairchild, and then expressed his belief that he was being blackmailed.

He also emphasized the unfairness of his son's prosecution juxtaposed with Bob Royals' non-prosecution, saying, and I now I quote from the record, "If they will go ahead and prosecute Bob Royals, they won't hear a damned word out of me. He's guilty and my son is guilty, but I just don't like them picking on my son because I got money," and I'm quoting directly from the transcript at trial.

Fairchild also stated that he believed that Bud Holmes was part of the blackmail effort, and even Carroll Ingram had involvement, and he so advised Judge Nixon. Fairchild had no specific recall of Judge Nixon's response at the time to him other than he may have grunted something about what Wiley Fairchild had said.

The evidence established at trial that following this meeting with Fairchild, Judge Nixon went to Bud Holmes' office. Bud Holmes' best recollection is that this meeting occurred on May 14th, 1982, although he testified on a number of occasions that it could have been another day.

Holmes' belief that the visit from Judge Nixon was May 14th, 1982, came from his association of the visit to other unrelated events that he can date. The DA visitors' log, his district attorney's office, reflects visits from Judge Nixon to Holmes on June 24th, 1982, July 16th, 1982, and October 20th, 1982.

Following the meeting in Bud Holmes' office, Holmes and Judge Nixon drove together to Holmes' farm. Bud Holmes had a farm six or seven miles outside of town. Holmes recalled a conversation—and this is Holmes' testimony at trial—during the trip wherein Judge Nixon stated that he had been at Fairchild's and Fairchild had, quote, "asked me if you and I weren't good friends, and I told him yes, you know, we were. And he said, well, would you mind putting in a good word for my boy," end of quote. That's Bud Holmes' testimony at trial.

Judge Nixon said he did not want Holmes to do anything wrong, embarrassing, or against his oath of office, but that he was, quote, "just saying that Mr. Fairchild asked me to put in a good word," end of quote.

At some point during this conversation, Judge Nixon mentioned to Holmes that he and Fairchild were discussing more oil and gas investments. Holmes responded to these statements from Judge Nixon by asking, quote, "What is it that you want? You want an apology? I don't know. What does the man want," end of quote.

When Judge Nixon reiterated that he was simply, quote, "putting in a good word," end of quote, and not asking Holmes to do anything, Holmes volunteered, quote, "Hell, I'm district attorney; I'll pass it to the files," end of quote. Judge Nixon, according to Holmes, responded, quote, "I'm not asking you to do anything now," end of quote.

Mr. **Baron**. Let me stop you there. What you have been reciting to the members of the subcommittee is Holmes' testimony of this conversation that he swore took place between himself and Judge Nixon as they are driving out to Holmes' farm, is that correct?

Mr. **Weingarten**. Yes.

Mr. **Baron**. All right.

Mr. **Weingarten**. Once the two men arrived at Holmes' farm, Holmes and Judge Nixon continued to talk about the Drew Fairchild case. Holmes told Judge Nixon about the oral agreement he had already worked out with Porter, Drew Fairchild's lawyer, and testified as follows, quote, "I told him that I already worked this arrangement worked out with Bill Porter. The man had the same agreement that the Federal court had offered, which was probation and a fine in return for cooperation," end of quote.

The testimony established that Judge Nixon at that time had no familiarity with the Drew Fairchild case, and upon hearing the terms of Holmes' deal with Porter, he asked Holmes if Wiley Fairchild knew about the deal. Judge Nixon also asked Holmes for permission to telephone Fairchild and discuss the deal with him. Holmes assented and Judge Nixon telephoned Wiley Fairchild.

Wiley Fairchild recalled getting a telephone call from Judge Nixon at around seven o'clock that night. He related that Judge Nixon said, quote, "Wiley, you know that man we was talking about this evening? Well, I'm in his house and everything is going to be taken care of to your satisfaction," end of quote.

After that, according to Wiley Fairchild, Holmes got on the telephone and said, quote, "Wiley, when this man asks me to do something, I don't ask no questions; I just go ahead and do it," end of quote.

Fairchild specifically recalled that Judge Nixon was on the telephone first. Fairchild recalled that this call made him very happy because it meant that his son's case was, quote, "done away with once and for all," end of quote.

The next thing he recalled happening relating to his son's case was that it was passed to the file.

Holmes' recollection of the call was similar to Fairchild's, that Judge Nixon placed the call and told Fairchild, quote, "I'm out at his farm and he tells me your son isn't going to jail and I just wanted to call you and tell you that," end of quote.

According to Holmes' testimony, Judge Nixon went on in this conversation to thank Fairchild for the profitable investments he had made with Fairchild. Holmes related that he then got on the phone and told Fairchild that he would pass the case to file, and he added that Judge Nixon should get full credit for helping Drew.

Carroll Ingram, the lawyer that Judge Nixon first approached, also learned of the farm telephone conversation from both Wiley Fairchild and Judge Nixon. In the fall of 1982, Wiley Fairchild told him that he had asked Judge Nixon to talk to Bud Holmes about his son's case, that Judge Nixon had done so, and that the results were positive in that, quote, "Drew Fairchild's case was going to be OK," end of quote, and the quotes come from Ingram's testimony.

Ingram also recalled Judge Nixon telling him that he had talked to Holmes about Drew Fairchild's case because Fairchild had asked him to; that Holmes had told Judge Nixon he would consider this request and that Fairchild's case was, quote, "OK; that there was not anything going to happen in Drew Fairchild's case," end of quote.

Ingram recalled this conversation with Judge Nixon at about the time Judge Nixon and Fairchild were discussing other mineral transactions. Ingram sensed—this was his testimony at trial—that Judge Nixon wanted him to be in a posture to help Judge Nixon with other investments from Wiley Fairchild.

Mr. BARON. Let me stop you for a moment. You've made reference to the fact that there came a time in December of 1982 when Bud Holmes, the DA, passed Drew Fairchild's case to the file.

Members of the subcommittee, you have before you a volume of exhibits, and if you will turn to Tab Number 18—and I'd ask you to do the same, Mr. Weingarten—is that the order passing Drew Fairchild's case to the file, to which you referred earlier in your testimony?

Mr. WEINGARTEN. Yes.

Mr. BARON. OK. Also, you made reference to the fact that royalty payments were made to Judge Nixon. Again, turning to Tab Number 11, do you see before you a summary of the royalty payments and payments on the note?

Mr. WEINGARTEN. I do.

Mr. BARON. And was that an exhibit at the trial?

Mr. WEINGARTEN. I believe it was. I don't recall if it was prepared by the FBI or prepared by Judge Nixon, but it looks very familiar to me.

Mr. **Baron**. OK. I believe it was Government exhibit 26 at the trial.

Mr. **Weingarten**. Yes. I believe the FBI prepared this.

Mr. **Baron**. Why don't you resume your testimony?

Mr. **Weingarten**. The events that I've described were unknown to the Government until in November of 1983—November 3rd, to be specific—the FBI received an anonymous telephone call. The caller——

Mr. **Baron**. I'm sorry. What was the date on that?

Mr. **Weingarten**. November 3rd, 1983. This would have been about a year after the case was passed to file, and I should say at that time Drew Fairchild's case still had not been resolved. He still had not been sentenced and the case was still in State court.

The caller alleged in this and subsequent calls basically that it was a corrupt relationship between Wiley Fairchild and Judge Nixon. They suggested that the corrupt relationship involved bribes being paid by Wiley Fairchild to Judge Nixon in the form of the mineral interests.

He opined that the reason for the bribes was Wiley Fairchild's desire to have his son's case taken care of.

The caller surfaced on March—I don't recall the date, but it was in March of 1984, about four months after his calls began, and I believe there were three or four or maybe five telephone calls to the FBI.

The caller was the individual Jarvis, the employee in Fairchild's office who prepared the overriding royalty deed that transferred the mineral interests to Judge Nixon.

Mr. **Baron**. Is this the Skip Jarvis you referred to earlier in your testimony?

Mr. **Weingarten**. Yes.

Jarvis at that point described what he had done vis-a-vis these instruments and continued his allegations that the reason for the mineral interests from Wiley Fairchild to Judge Nixon related to Drew Fairchild's case.

Mr. **Baron**. Did he have any facts in that regard other than the fact that he had participated in the preparation of the documentation? I mean, did he know anything? Did he witness anything that he could testify about at that point?

Mr. **Weingarten**. He had no facts whatever that Judge Nixon had done anything at all with Drew Fairchild's case. He had inferences; he had speculation that the back-dating to Skip Jarvis meant the reason for the back-dating was to get the transaction behind Drew Fairchild's case temporally so that no one could ever say that Wiley Fairchild entered into the relationship because of Drew's case.

Mr. **Baron**. That was Skip Jarvis' speculation. He did not know that for a fact, am I correct?

Mr. **Weingarten**. He did not know it from Judge Nixon and he certainly didn't know it from Wiley Fairchild.

Mr. **Baron**. OK.

Mr. **Weingarten**. The Government, pursuant to the allegations by Skip Jarvis, began an investigation.

Mr. **Baron**. Now, did that involve the Public Integrity Section of the Department of Justice at that early stage?

Mr. **Weingarten**. Yes. Procedurally in the department, if an allegation is made that involves a United States district court judge in any way, shape or form, the case is handled by the Public Integrity Section of the Criminal Division of the Justice Department.

Mr. **Baron**. And at that time, you were a member of that unit?

Mr. **Weingarten**. I was.

I was assigned to work on this matter. Part of the investigation involved interviewing Judge Nixon in his chambers on April 19th, 1984. I participated in that interview along with an FBI agent named Ken White-Spunner.

Mr. **Baron**. Members of the subcommittee, behind Tab 22 in your exhibit book, you will find a rather lengthy 50-page transcript of that interview. We have equipment set up so that we are going to play certain portions of that. Obviously, the entire interview is available for your review. It may take a moment until we are in a position to actually play it.

Mr. **Stewart**. Mr. Chairman, if I might be heard for a moment——

Mr. **Edwards**. Mr. Stewart, at this moment the questions of this particular witness, pursuant to our Congressional rules, must continue and you will have your time a little later.

Mr. **Baron**. These headsets—there is an on-off button on the side. There is a volume control for each earpiece on the side and you have to wear them with the sort of button facing forward.

Mr. **DeWine**. Mr. Chairman, could counsel repeat the lead-in as to what we are going to hear?

Mr. **Baron**. We are going to hear portions of a tape recording of an interview which was conducted by Mr. Weingarten and FBI agent White-Spunner. This was an interview of Judge Nixon and the date on this is April 19th, 1984.

Mr. **Weingarten**. Perhaps this would be useful. The Government called Judge Nixon and requested an interview. Judge Nixon acceded to the request. An FBI agent and I drove down to Biloxi to Judge Nixon's chambers. We introduced ourselves. I had never met Judge Nixon before. We requested permission to interview. We said we'd like to have the interview taped. Judge Nixon agreed to having the interview taped and the interview ensued.

Mr. **Baron**. Can you take some care to speak into the microphone because it is a little hard to hear you sometimes?

Mr. **Weingarten**. Sorry.

Mr. **Baron**. And, also, other than the allegation which you have characterized in large measure as speculation by Skip Jarvis concerning the back-dating of the mineral interests, what else did you have and did you know about when you sat down to interview Judge Nixon?

Mr. **Weingarten**. There was no speculation about the back-dating. We had established by that point that——

Mr. **Baron**. The speculation I'm talking about is really the inferences, the speculative inferences that he was drawing from the fact of the back-dating.

Mr. **Weingarten**. The information that we had at the time was that there was something screwy going on with the Drew Fairchild case. Here we were in 1984; the drug bust occurred four years prior. Drew Fairchild was not in prison; he had never been in prison. The case had not been resolved. It was bouncing around like a ping-pong ball.

In addition, we had Jarvis' allegation that he was involved with Wiley Fairchild in what he believed was a payment of a bribe to Judge Walter Nixon, and the circumstances attendant thereto, including the back-dating, including leaving the documents in blank in the beginning, including the receipt back from Carroll Ingram of the documents and instructions to increase the acreage.

At that point, Skip Jarvis had no idea about notes being present. It was his view that it could well have been that this was a gimme, this was a gift to Walter Nixon.

Mr. BARON. OK.

Are we ready? Now, the first portion we are going to hear begins at page 18 of the transcript and it begins toward the bottom third of the page when it says, "When you met with Fairchild."

For identification purposes, when you see the letter W, it is Mr. Weingarten. When you see the letter N as the speaker, it is Judge Nixon, and occasionally you will see W-S, and that is the special agent White-Spunner.

[Playing of tape recording.]

[See appendix.]

Mr. BARON. It may take a moment to move to side B of the tape. We pick up at page 36.

[Playing of tape recording.]

[See appendix.]

Mr. BARON. Now, we go to page 43.

[Playing of tape recording.]

[See appendix.]

Mr. BARON. Mr. Weingarten, was this interview—was Judge Nixon under oath?

Mr. WEINGARTEN. No.

Mr. BARON. And am I correct that nothing in this—none of his answers in this interview were ever the subject of any prosecution?

Mr. WEINGARTEN. That's correct.

Mr. BARON. OK. Speak into the mike.

Mr. WEINGARTEN. That's correct.

Mr. BARON. And, again, I want to be sure we understand that the testimony that you gave earlier in which you alluded to Bud Holmes' testimony at trial about driving out to his farm and having the conversation that he described and the phone call from the farm to Wiley Fairchild and your testimony in that regard—that is testimony that you learned much later. At the time of this interview, you know nothing about that. Am I correct?

Mr. WEINGARTEN. That's correct.

Mr. BARON. OK.

Well, subsequent to your interview with Judge Nixon, what was the next step in your investigation?

Mr. WEINGARTEN. The next step was to request—well, there were a number of—I'm sure there were a lot of steps, but the next significant step was a decision was made by the Justice Department to request permission to begin a special grand jury investigation.

That request was made to the Chief Judge of the Fifth Circuit. That request was considered and granted, and a judge from Louisiana was assigned the task of supervising that grand jury.

I think it's relevant to add that the Government learned later, and Bud Holmes testified later at trial that soon after the interview that was conducted with Judge Nixon in Judge Nixon's chambers, Judge Nixon had a meeting with Bud Holmes. This was——

Mr. BARON. How did you learn about this meeting?

Mr. WEINGARTEN. Well, only much later on from Bud Holmes, and Bud Holmes testified to this at trial.

At the time, Judge Nixon expressed indignation that he was under investigation by——

Mr. BARON. Let me stop you. I'm a little bit confused. What you're now telling us is something that Bud Holmes testified to at trial about an event which occurred not long after the interview with Judge Nixon where we just heard excerpts on the tape. Is that correct?

Mr. WEINGARTEN. Exactly.

Mr. BARON. OK.

Mr. WEINGARTEN. Bud Holmes testified that Judge Nixon expressed indignation at being the subject of an investigation. At the same time, he denied having talked to anyone about the Drew Fairchild case, and then he asked Holmes if the telephone call from the farm to Wiley Fairchild had been taped.

Mr. BARON. That's Holmes' testimony?

Mr. WEINGARTEN. Yes.

Mr. BARON. Incidentally, we've heard excerpts of a 50-page transcript. Anywhere in your interview with Judge Nixon, did he allude to the drive out to the farm with Holmes, the telephone call to Wiley Fairchild any of that information that you ultimately learned from Mr. Holmes and others later on?

Mr. WEINGARTEN. No.

The grand jury in the Southern District of Mississippi was empaneled, I believe it was July 18th, 1984. Judge Nixon's counsel had been contacted and a request was made that Judge Nixon appear. Judge Nixon's counsel advised the Government that Judge Nixon would appear voluntarily, and he did so.

He testified during the first session of the grand jury. I don't recall specifically if it was the first day or the second day.

Mr. BARON. Now, that took place on July 19th, 1984. Am I correct?

Mr. WEINGARTEN. I'll accept that if that's what's on the transcript.

Mr. BARON. I'm sorry. July 18th is what I'm being told, although it says July 19th on my sheet. I'm sorry. It's July 18th.

This is found, members of the subcommittee, behind Tab 23 in your binder, and we'll begin at page 45 of that transcript. On this tape, the earphones may be of more assistance because the quality is not as good, I believe, as the tape we heard before.

[Playing of tape recording.]

[See appendix 1.]

Mr. BARON. Pick up at page 75.

[Playing of tape recording.]

[See appendix 1.]

Mr. BARON. Now, Mr. Weingarten, was Judge Nixon subpoenaed to the grand jury or was that a voluntary appearance on his part?

Mr. WEINGARTEN. Voluntary appearance.

Mr. BARON. Did he have counsel?

Mr. WEINGARTEN. We first contacted his counsel. Of course, his counsel was not permitted in the grand jury, but his counsel was involved with the process.

Mr. BARON. OK. Now, his grand jury testimony from which we have just heard excerpts, that was under oath, was it not?

Mr. WEINGARTEN. It was.

Mr. BARON. OK, and at that time—well, first of all, was he told that anything that he stated there could be used against him?

Mr. WEINGARTEN. As I recall, he was given the standard rights that all witnesses receive when they appear in the grand jury.

Mr. BARON. OK. At that time, am I correct that you still did not know about the conversation between Judge Nixon and Bud Holmes that Holmes testified to later at trial? You did not know about the phone call that had been placed from the farm to Wiley Fairchild that Mr. Holmes and others later testified to at the time that you were questioning Judge Nixon in the grand jury?

Mr. WEINGARTEN. That's correct.

Mr. BARON. OK. We have heard excerpts from Judge Nixon's testimony before the grand jury. At any time in the course of his grand jury testimony, did he bring up the trip, the conversation in the car with Mr. Holmes, the phone call that Mr. Holmes later testified to that was made from the Holmes farm to Wiley Fairchild?

Mr. WEINGARTEN. He did not.

Mr. BARON. Now, am I correct that portions of the testimony that we have heard from the grand jury did become the basis for the two perjury counts where were—on which Judge Nixon ultimately was convicted?

Mr. WEINGARTEN. That's correct.

Mr. BARON. And one portion came from the lengthy statement which he volunteered at the end when he was asked was there anything else he wanted to say?

Mr. WEINGARTEN. That would have been count four.

Mr. BARON. And there was a portion also when he asked about did he ever discuss the case with Bud Holmes and he said not to his recollection and he thought he would recall it if it had occurred?

Mr. WEINGARTEN. That's correct.

Mr. BARON. Can I ask that we look at Tab 37 in the exhibit books, and that is the indictment, is it not, on which Judge Nixon was prosecuted?

Mr. WEINGARTEN. Yes.

Mr. BARON. And in counts three and four, there are specific excerpts from this grand jury testimony that we just heard set forth in the respective counts of the indictment, is it not?

Mr. WEINGARTEN. That's correct.

Mr. BARON. What was the next significant event after Judge Nixon's appearance before the grand jury that we have just heard?

Mr. WEINGARTEN. Probably the return of an indictment naming Wiley Fairchild as a defendant, and that took place in September of 1984.

Mr. BARON. Now, was that a personal decision by you? Was it a decision that was made by persons with whom you consulted? How was that done?

Mr. WEINGARTEN. Well, the decision to return the indictment was made by the grand jury. The decision to present the indictment was a decision that I would have initiated and it would have been reviewed by several layers back in the Department of Justice from the Public Integrity Section up through the Criminal Division.

Mr. BARON. OK.

Mr. WEINGARTEN. At every step of the way, my activities in Mississippi were carefully supervised and monitored by the Public Integrity Section and the Criminal Division of the Justice Department.

Mr. BARON. All right. Now, through that process, Wiley Fairchild was indicted. What was he charged with?

Mr. WEINGARTEN. He was charged with a count of illegal gratuities, 18 United States Code 201, referring back to the mineral royalty interests, and he was charged with a count of perjury, 18 United States Code 1623.

Mr. BARON. OK. Members of the subcommittee, this appears at exhibit 25 in your books, if anybody wants to refer to that.

Again, what was the next step?

Mr. WEINGARTEN. Well, as I recall, there were pre-trial motions filed and argued and denied, and we were preparing to go to trial and we were contacted by counsel for Fairchild.

Mr. BARON. Wiley Fairchild, now?

Mr. WEINGARTEN. Wiley Fairchild. We were advised that they wished to discuss a resolution of this matter, and at one point I was advised that they had a, quote, "smoking gun."

I and other lawyers for the department and FBI agents met with counsel for Wiley Fairchild, and it was at that time that we first learned about the phone call from the farm.

Mr. BARON. Well, describe that to us as to just what happened.

Mr. WEINGARTEN. In the normal course of events, a lawyer who is plea bargaining will make a proffer. The proffer will include facts that he believes his client can provide that may or may not be helpful to the Government. The proffer in this instance included representations that Fairchild had had contact with Judge Nixon concerning his son's case.

Mr. BARON. Including this call from Holmes' farm?

Mr. WEINGARTEN. Yes.

Mr. BARON. OK, and that, if I understand it, was the first time you knew or learned that this event had taken place?

Mr. WEINGARTEN. True.

Mr. BARON. OK. What was the next step?

Mr. WEINGARTEN. Well, a plea bargain ensued. Fairchild was permitted to plead guilty to count one of the indictment. Count two was dismissed, and representations would be made, or promises were made that the full extent of his cooperation would be made known to the sentencing judge. There was no——

Mr. BARON. Can you give me a time frame on this? Do you recall?

Mr. WEINGARTEN. Late 1984.

Mr. BARON. Well, if I told you the indictment appears to have been filed September 6th, 1984, is that consistent with your recollection?

Mr. **Weingarten**. It was obviously subsequent to the filing of the indictment. It would have been right before the trial would have been scheduled. My best estimate—it would have been somewhere around November or December of 1984

Mr. **Baron**. OK.

Mr. **Weingarten**. I think if we had the date of Wiley Fairchild's plea, that—obviously, the agreement would have come right before that.

Mr. **Baron**. OK, we'll track that. November 20th, 1984, is a letter from you to his counsel discussing the proffer and the deal. OK.

Mr. **Weingarten**. Subsequent to that, we would have followed up on the information that Wiley Fairchild would have provided and we would have been in contact with Carroll Ingram through his attorney.

Mr. **Baron**. Well, you say you would have. What, in fact, do you recall doing? Did you then contact Ingram?

Mr. **Weingarten**. Sure, yes, yes, and fleshed out evidence that Ingram had provided on previous occasions. I guess I'm a little concerned about Ingram because I'm advised that you do not have a 6(e) order and some of the events that I'm referring to took place in the grand jury, and I'm under the opinion that I'm not permitted to disclose such evidence. If I'm incorrect in my assumption, I'm——

Mr. **Baron**. Well, why don't you for the time being just work your way around that, to the extent you can proceed without referring to any grand jury testimony?

Mr. **Weingarten**. There were discussions with Ingram and his attorney. At the conclusion of the discussions, we concluded that Ingram would not be a target of the grand jury, but he would be a fact witness in the grand jury, and he went back in the grand jury and testified again.

Ingram advised us prior to testifying in the grand jury that he, too, had information about the telephone call from the farm. The information he received was not as a participant in the phone call, but rather received it from Judge Nixon and received it from Wiley Fairchild.

Mr. **Baron**. That is, Ingram had had conversations with Judge Nixon and with Wiley Fairchild relative to a telephone conversation from Bud Holmes' farm, but in which Ingram was himself not a participant?

Mr. **Weingarten**. Right. What Ingram did is he corroborated in a substantial way the fact that the conversations took place, the fact that Bud Holmes had been approached by Judge Nixon and Judge Nixon had attempted to influence the Drew Fairchild case by putting in a good word for Drew Fairchild from Wiley Fairchild.

Mr. **Baron**. Now, at this point, had Bud Holmes advised you about this? Here, you've got Wiley Fairchild telling you about it; you've got Ingram corroborating it, in effect, second-hand. Bud Holmes is not yet someone who has come forward?

Mr. **Weingarten**. That's absolutely correct.

Mr. **Baron**. OK.

Mr. **Weingarten**. We learned later that soon after Carroll Ingram provided us this information, this corroboration, he advised

Holmes that he had done so, that he had told the Government about the phone call from the farm.

We learned later from Holmes, and Holmes so testified at trial, that Holmes then went to Judge Nixon and so advised him of Carroll Ingram's cooperation. Holmes testified that he was instructed by Judge Nixon to meet Judge Nixon in the parking lot of the Hattiesburg courthouse after dark.

Judge Nixon, as I recall, was then conducting a trial. The jury was out, and according to Holmes, Judge Nixon instructed him to meet with him in the parking lot after dark.

Holmes testified that he opined to Judge Nixon that it was time to give up the phone call to the authorities, to tell the authorities about it, that it was not such a big deal. Holmes testified that Judge Nixon's response was that he didn't know what Bud Holmes was talking about and that Judge Nixon then chastised him for talking to Ingram at all about the telephone call.

Mr. BARON. OK.

Mr. WEINGARTEN. Following that, Bud Holmes testified in the grand jury. An indictment was presented to the grand jury naming Bud Holmes as a defendant. The charges included obstruction of justice relating to the ongoing grand jury investigation and, with some specificity, the relationship between Wiley Fairchild and Judge Nixon, and several other counts of perjury.

The indictment was presented and returned on March 29th, 1985. As I recall, on that day as well the United States sought the indictment of Drew Fairchild—Drew Fairchild, Wiley's son—on the initial drug charges dating back to August 1980.

Following the indictment of Bud Holmes, there were pre-trial motions argued and a trial date was set.

Mr. BARON. Were you going to try that case?

Mr. WEINGARTEN. It was actually the beginning of the trial. I was the lead trial counsel in the Bud Holmes case.

The trial was scheduled for June 17th, 1985. A jury was selected. After the jury was selected, counsel for Bud Holmes and counsel for the Government got together. There were plea discussions and there ensued a plea agreement and the trial was aborted.

The plea agreement called for a plea by Bud Holmes to the crime of criminal contempt under 18 United States Code 401, and the criminal contempt charge tracked the obstruction of justice charge that initially appeared in the indictment. The other counts were agreed to be dismissed.

There was a one-year prison cap on the plea agreement and Bud Holmes was obliged to be completely cooperative with the Government.

Mr. BARON. Did he subsequently then cooperate with the Government?

Mr. WEINGARTEN. He did.

Mr. BARON. And did he provide additional information from himself concerning any conversations he may have had with Judge Nixon, the telephone call, and the rest from his farm?

Mr. WEINGARTEN. In connection with the call from the farm and the events leading up to it, he provided the information that I've reported to the committee heretofore.

Once Bud Holmes' cooperation was secured and he testified as I've just described where he reported the events as I've just described, we contacted counsel for Judge Nixon. We advised him that we believed that testimony that Judge Nixon had given in the grand jury was perjurious.

We met with counsel for Judge Nixon. We showed Judge Nixon's counsel the exact areas where we thought there were perjury problems. There were discussions about how to resolve this.

Mr. BARON. Were those the same areas that ultimately became the basis for the indictment?

Mr. WEINGARTEN. There may have been more, but certainly included in the group were the ones that were ultimately charged.

Presentation of an indictment of a grand jury naming Judge Nixon as a defendant was delayed on at least two occasions to convenience Judge Nixon's counsel. Eventually—there was no resolution of the matter—on August 29, 1985, the indictment was presented and returned by the grand jury and it contained the four counts that you describe.

Mr. BARON. Now, did there come a time when that—I guess the next event of significance is the trial itself?

Mr. WEINGARTEN. Yes.

Mr. BARON. OK.

Mr. WEINGARTEN. The trial, again, began in January. As I recall, it took a long time to pick the jury because we had a sequestered jury. There was about ten days of testimony. The Government's case was as I described it in the beginning of my testimony.

Judge Nixon presented a defense.

Mr. BARON. Well, can you give us a quick, again, synopsis just to refresh our recollection, of what the Government's case essentially consisted of?

Mr. WEINGARTEN. As I recall, the first three witnesses in the Government's case, and I'm not certain of the order, were Drew Fairchild. Drew Fairchild basically described his case. He had no incriminating evidence whatever against Judge Nixon.

Skip Jarvis testified. The purpose of Skip Jarvis' testimony was to describe the inception of the Government's investigation and his first-hand knowledge of the instruments. There was count one of the indictment, the gratuity count.

And George Phillips testified. His testimony was limited to how the case went from the Federal system in Jackson to——

Mr. BARON. I think George Phillips is a name that we're hearing for the first time by name. He was the U.S. Attorney in that district, was he not?

Mr. WEINGARTEN. Yes. He was the U.S. Attorney who initially handled the drug bust and he was the U.S. Attorney who acceded to the request from Bud Holmes be sent to Hattiesburg. He's up in Jackson.

Mr. BARON. That moved the case from the Federal system initially into the State system?

Mr. WEINGARTEN. Yes.

Mr. BARON. OK.

Mr. WEINGARTEN. The next three witnesses were Wiley Fairchild, Bud Holmes, and Carroll Ingram, and they testified to the events that I've heretofore described.

Mr. **Baron**. OK.

Mr. **Weingarten**. Judge Nixon presented a defense. He also testified himself at trial. He admitted at trial having conversations with Wiley Fairchild in Fairchild's office, in which Fairchild discussed his belief that Holmes and Ingram were blackmailing him.

Mr. **Baron**. Was this the first time that Judge Nixon testified to that effect or made a statement publicly to that effect?

Mr. **Weingarten**. Well, it was the first time I had heard it. It was not in the grand jury; it was not in my interview.

Judge Nixon claimed that he did not inquire further of Fairchild into this allegation because he did not represent Fairchild as a lawyer and he was not a law enforcement officer.

He said he thought that Wiley Fairchild's complaints were, quote, "nonsense," end of quote, but that he was, quote, "shocked," end of quote, by them. Judge Nixon said he later went to Holmes' farm where he related Fairchild's complaints to Holmes because they were, quote, "weighing on his mind," end of quote, after which he listened to records while Holmes was on the phone until Holmes suddenly handed him the phone and said, quote, "Here, talk to Wiley Fairchild," end of quote, and Fairchild said, quote, "I'm glad you mentioned that matter to Bud; I'm satisfied," end of quote.

Judge Nixon denied having discussed the Fairchild case with Holmes that night and explained that Holmes wanted to discuss the case with him, but Judge Nixon did not want to because it would take too much time, given Holmes' talkativeness.

He further stated that this call took place in March 1983, and he vigorously denied having been in Hattiesburg on May 14th, 1982, the date Holmes believed the phone call may have taken place.

Mr. **Baron**. Now, March 1983 would have put the event, the visit to the farm and the conversation with Mr. Holmes, after Holmes had passed the case to the file, would it not? That occurred in December of 1982, if I recall your testimony.

Mr. **Weingarten**. Correct.

Mr. **Baron**. OK.

Mr. **Weingarten**. The three witnesses, Fairchild—well, Fairchild and Holmes testified directly that the conversation, this conversation we're speaking of, took place before the case was passed to files.

Ingram testified that he learned from Judge Nixon and Wiley Fairchild about the conversation prior to the case passing to files. So whether or not it was passed before or after the case was passed to files was a central issue at trial.

Subsequent to trial, during the pre-trial motions, evidence was produced that Judge Nixon, in fact, had been in Hattiesburg on May 14, 1982, receiving dental treatment in the afternoon.

Mr. **Baron**. These were dental records?

Mr. **Weingarten**. Yes.

Mr. **Baron**. OK, and, members of the subcommittee, if we look behind Tab 14, if we look at the third page of that exhibit, it shows 5-14-82 related to Judge Walter Nixon as a patient. I believe it also appears on the first page; it's just not quite as clear.

Mr. Weingarten, you've described Judge Nixon's testimony at the trial. What essentially was his defense other than—was that essentially his defense, his testimony describing the events?

Mr. **Weingarten**. Well, I think his defense to count one, the gratuity count, was that it was a legitimate business deal. His defense to the perjury counts was that while these conversations took place, they didn't amount to him having anything to do with the Drew Fairchild case.

Mr. **Baron**. And with the issue to whether or not a discussion, and using that word in particular, had taken place, did he raise that at the trial or was that raised on appeal that he didn't understand the word "discussion?" Do you recall?

Mr. **Weingarten**. I don't think he ever said in his examination that he didn't understand the word "discussion."

Mr. **Baron**. Or that the word was ambiguous in some respect?

Mr. **Weingarten**. I don't think he ever said that. That certainly has been an issue that has been litigated, but I—where it was the first time litigated, I'm not sure. I don't recall him saying that at all in his testimony.

Mr. **Baron**. OK. Is there anything further that you want to tell us about the proceedings, the trial, the testimony?

Mr. **Weingarten**. Only that the trial concluded. The jury deliberated for 18 hours. The jury came back; not guilty on counts one and two and guilty on counts three and four.

Mr. **Baron**. That appears at Tab Number 41 in the exhibit book, and I believed you testified also that Judge Nixon ultimately received five years concurrently on each of the two counts for which he was convicted.

Mr. **Weingarten**. That is correct.

Mr. **Baron**. Members of the subcommittee, that appears at Tab 42 of the book.

Is there anything further, Mr. Weingarten?

Mr. **Weingarten**. No.

Mr. **Baron**. Mr. Weingarten, I'd like to discuss briefly with you certain allegations. You testified earlier that procedurally there is pending a habeas corpus petition by Judge Nixon in which he makes certain allegations concerning the conduct of the Government, and I suppose of you personally, with regard to his trial.

In general, it appears that if you group various of the specific allegations, there is a claim that the Government violated its obligation to disclose all material inducements that were offered to win the cooperation of Wiley Fairchild.

Could you tell us what your response is to that? You have responded on behalf of the Government to those allegations in the pending proceeding, have you not?

Mr. **Weingarten**. I'm a private attorney at this point. My understanding is the Justice Department has responded.

Mr. **Baron**. OK.

Mr. **Weingarten**. I was asked to submit an affidavit, which I did. My affidavit speaks for itself. I made no inducements to Wiley Fairchild that were not disclosed to the defense at this trial.

Mr. **Baron**. OK.

Mr. **Weingarten**. I'd be happy to respond on more detail to anything, but you ask such a broad question.

Mr. Baron. I don't think I have any further questions at this time, Mr. Chairman.

Mr. Edwards. Members of the subcommittee will now have the opportunity to question the witness. After the members have completed their interrogation, we will recognize Mr. Stewart for questions.

Mr. Kastenmeier.

Mr. Kastenmeier. Mr. Chairman, I have no questions to ask of the witness.

Mr. Edwards. Mr. Sensenbrenner.

Mr. Sensenbrenner. Mr. Chairman, I have no questions to ask the witness.

Mr. Edwards. Mr. Conyers.

Mr. Conyers. I do have a question, Mr. Chairman.

Could you tell me why the U.S. Attorney acceded to the request to send the case to Hattiesburg?

Mr. Weingarten. My understanding, Mr. Conyers, is that the U.S. Attorney from Jackson did not perceive to be—did not perceive the request to be unusual in any way. He was inundated with drug cases. He was only too happy to shed some of the burden.

He viewed the case as one of tremendous local interest in Hattiesburg and perceived no problem in transferring it. That was his explanation, and there is no reason to disbelieve that.

I should also add in Mississippi there is not a great Federal law enforcement presence, and typically in a State like Mississippi the Feds have to cooperate with the locals and you find such transfers far more frequently in a smaller State like Mississippi than you would in the Southern District of New York, for example.

Mr. Conyers. I thought it would be more common for the case to be transferred from the State to the Fed——

Mr. Weingarten. I think that——

Mr. Conyers. —rather than from the Fed to the State.

Mr. Weingarten. Well, I think that is generally absolutely correct. The more sophisticated the case, typically the Federal Government handles it. It is unusual, and we perceived it to be unusual when we first got to Mississippi.

Mr. Conyers. Well, that's a part of this case that intrigues me.

Let me ask you about the order to pass the case to the file. Was there anything wrong with that order on its face?

Mr. Weingarten. It was so unusual—well, what was wrong with it—I think it makes representations that Drew Fairchild had been cooperating with the Federal Government. As I recall, that's what it says and, of course, the Federal Government perceived Drew to be in breach of his agreement for the reason that he wasn't cooperating to their satisfaction. So there's a question whether or not it contained incorrect facts.

In addition, there was a woman prosecutor in the DA's office in Hattiesburg who was actually handling the Drew Fairchild case. She had no knowledge that this was coming. She was shocked that Bud Holmes passed the case to the file, or moved to pass the case to the file.

It was a procedural device whereby if a first offender was charged with a trivial offense and there was no perceived need to proceed with the prosecution, the case was passed to file, put in abeyance usually forever, with the understanding that if the individual kept his nose clean, the case would not come back.

The idea that an individual pled guilty and then had his case passed to file—I think a judge testified—a local Mississippi judge testified at trial that it was virtually unprecedented. So the circumstances surrounding the whole thing were very, very unusual.

And in addition to that, the facts developed that Bud Holmes, when he received the order back from the court, handed it to Carroll Ingram, instructed him to give it to Wiley Fairchild. Ingram gave it to Wiley Fairchild and said, "Merry Christmas."

Mr. CONYERS. So did this passing the case to the file create a reaction among others in law enforcement in the State?

Mr. WEINGARTEN. Yes.

Mr. CONYERS. Both at the State and Federal level?

Mr. WEINGARTEN. Well, what came out of trial was that immediately after the case was passed to files, a new judge took his seat in Hattiesburg and the judge took note of the fact that the Drew Fairchild case had been passed to files.

The Fairchild name is a big name in Hattiesburg. It's a small community and Wiley Fairchild is a very wealthy man, and it was a notorious case. And certainly within the courthouse and law enforcement circles, people were talking, and Bud Holmes testified that that was the primary reason why he grabbed the case back and put it back on the active docket.

Mr. CONYERS. I see.

Do you have any information as to how the charges against the judge have come to be placed in this impeachment process? In other words, have you had any input into on which of these grounds an impeachment has been put?

Mr. WEINGARTEN. No.

Mr. CONYERS. Do you know on what grounds an impeachment resolution has been filed?

Mr. WEINGARTEN. I just presume it's based on the conviction.

Mr. CONYERS. OK. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. DeWine.

Mr. DEWINE. Thank you, Mr. Chairman.

Mr. Weingarten, I believe you testified that the jury deliberated for 18 hours, is that correct?

Mr. WEINGARTEN. Yes.

Mr. DEWINE. During that period of time, did they have questions to the court?

Mr. WEINGARTEN. To be sure, I'd have to check with the record. They came back at a time or two and said they were deadlocked, and I believe—I'd be much more comfortable if I had the record before I answered that question.

Mr. DEWINE. Was there any indication based upon anything that they said as they came back during the deliberations or after the deliberations as far as where that deadlock was, on which count or counts?

Mr. WEINGARTEN. I just don't recall. I'm sorry.

Mr. DEWINE. When you reached the point of the trial to give the closing argument, did you give the closing argument yourself?

Mr. WEINGARTEN. Yes.

Mr. DeWine. After the facts had been developed in the case and the testimony was all out, at that point what was your theory—what was the prosecutor's theory, the Government's theory, in regard to the gratuity case?

Mr. Weingarten. It was consistent with Fifth Circuit law. I mean, the law on gratuity around the circuits is different. In the Fifth Circuit, there's a recent case right on point that says if you give a public official something of value because he's a public official in anticipation of future favors, you have violated the gratuity statute.

I believed, and still believe, that the evidence established that was the only reason Wiley Fairchild gave Judge Nixon the mineral interests, and I believe Judge Nixon would have understood that. And I believe the evidence adduced at trial supported that, and that's what I argued.

Now, there's no doubt but that I'd wished some of the evidence relating to the gratuity count came in a little better during trial, and I was a little disappointed at some of that evidence. But I had no doubt in my mind that it was an appropriate charge, and I had no doubt in my mind as I argued it to the jury that it was an appropriate charge.

Mr. DeWine. Your understanding of the law would be what in regard to what you had to prove in regard to Judge Nixon in regard to the gratuity charge?

Mr. Weingarten. A sweetheart deal that was given to a public official only because of his office in anticipation of future favors, official favors.

Mr. DeWine. Did you have to prove that something was returned at a later date or only that at the point in time when the judge received it——

Mr. Weingarten. No. I think the—I'm sorry. I didn't mean to cut you off.

Mr. DeWine. No, no. Go ahead. I think you understand the question.

Mr. Weingarten. I think the inquiry focuses on the intent of the individual when he receives a thing of value and the offeror when he gives the thing of value. I mean, the battle ground, and it was a serious battle ground, was the identification of the official act.

I mean, basically the District of Columbia Circuit requires an identification, for intents and purposes, of the official act. Well, the argument that we made to the judge is that's tantamount to bribery. Gratuity is two-year felony; bribery is a 15-year felony.

And there was Fifth Circuit law, and we were in the Fifth Circuit, directly on point to support us.

I mean, we didn't charge, and I never thought we had to prove, a specific, identifiable, official act to establish the gratuity.

Mr. DeWine. Could you summarize for us—moving on to the perjury charge, could you summarize for us the difference in the testimony in regard to the two principal meetings between the defendant judge and the other witnesses? What are the main differences in the testimony? What did the jury have to sort out? You know, what was in dispute, what was not in dispute? What was the factual question?

Mr. **Weingarten**. A crucial distinction was who made the call to Fairchild. Holmes and Fairchild testified that Judge Nixon made the call. Judge Nixon, of course, testified that Bud Holmes made the call.

A central point was Judge Nixon assertively putting in a good word for Drew Fairchild. That was Holmes' testimony, and that's basically what Ingram reported Judge Nixon had told him. Judge Nixon never said anything like that in his defense.

Mr. **DeWine**. Thank you. Thank you, Mr. Chairman.

Mr. **Edwards**. Mrs. Schroeder.

Mrs. **Schroeder**. Thank you, Mr. Chairman.

When Mr. Holmes put this back on the active docket, did it ever become active?

Mr. **Weingarten**. There were a variety of continuances from early 1983 until the United States presented an indictment in 1985. The bottom line is Drew never got sentenced and he never was called upon to cooperate.

Mrs. **Schroeder**. So the whole thing about active—I guess I come from a part of the country where we don't understand that.

Mr. **Weingarten**. I frankly was not familiar with the procedure either until I got to Mississippi. I really think the inactive docket is—it's just abeyance. Nothing happens to the case; it just lies there.

Mrs. **Schroeder**. Do you have any—or did you do any investigation into the motivation of Holmes as to why he first decided to put it on an inactive docket?

Mr. **Weingarten**. Holmes' testimony at trial is he was motivated primarily by wanting to do a favor consistent with the conversation from the farm.

Mrs. **Schroeder**. And was there any independent research to see if there was anything else? I mean, could anybody tie Holmes to any Fairchild deals or any other things?

Mr. **Weingarten**. There was—well, there were a lot of allegations against Bud Holmes. We heard a lot of allegations. I think it was pretty clear that there was not a good relationship between Bud Holmes and Wiley Fairchild.

I mean, Fairchild had made the allegation that Holmes was blackmailing him, so we didn't think that was a live possibility. There was no other plausible theory presented to us or uncovered in the course of the investigation as to why Holmes would have done what he did or take the step that he did.

Mrs. **Schroeder**. I guess I'm confused by that, too, because if you thought that you were being blackmailed by this—or this man was alleging that you were blackmailing him, why you would then do him a favor.

Mr. **Weingarten**. Well, the only testimony that Holmes would have received—well, it was Judge Nixon's testimony that that's the allegation that Fairchild made that he reported to Bud Holmes.

Bud Holmes' testimony was that Judge Nixon simply came to him and said he's putting in a good word for Drew Fairchild. I mean, Bud Holmes' testimony is that the two men were very close friends. Judge Nixon was the chief Federal judge in the district—or I guess he wasn't the chief Federal judge at that time; he was a

Federal judge in the district. And he was only too happy to do what he could.

He testified that when he got on the phone with Fairchild that night, he expressly gave Judge Nixon all the credit for whatever good thing was going to happen to the Drew Fairchild case, so as to ensure the economic relationship between Wiley Fairchild and Judge Nixon.

Mrs. SCHROEDER. Do you know how common this passing to the file is? I mean, did Holmes do this routinely or did he do it sparingly? Did anybody look into that?

Mr. WEINGARTEN. Yes. A witness at trial, Judge Weldy, who was a Mississippi judge and a Mississippi lawyer, said—I think he said it was unprecedented. He may have said it happened once in all his experience in Mississippi that someone who had pled guilty had his case passed to file.

I believe it was a device for first-time offenders just to put it on the file, get rid of it. I believe that was what it was used for. In terms of the regularity of it, I can only repeat the testimony of the prosecutor, Katie Matison, who had the case on a day-to-day basis. She was shocked that Holmes did this.

Mrs. SCHROEDER. So——

Mr. WEINGARTEN. I should add as well Drew Fairchild didn't ask for it, he didn't request it, he didn't expect it coming. I mean, this was done whole-cloth out of Bud Holmes' mind.

Mrs. SCHROEDER. So your personal feeling from listening to the trial testimony would be that this would be a rather extraordinary thing for Bud Holmes to do?

Mr. WEINGARTEN. It was—I think I said this in closing argument—it was a bizarre act, and the only way it makes any sense is that Bud Holmes was trying to do a favor for Wiley Fairchild. And then you have to come back and say why was he interested in doing this, and you get back to the Government's other evidence.

Mrs. SCHROEDER. Thank you.

Mr. EDWARDS. Mr. Weingarten, I believe you said that Drew Fairchild never drew any jail time, is that correct?

Mr. WEINGARTEN. He was—no. When he was prosecuted by the United States, he immediately pled guilty to the indictment. He was taken before a judge in Louisiana and he was sentenced. The judge was advised as to his cooperation.

At that point, I should add Drew Fairchild was cooperating with the United States. His cooperation in connection with Judge Nixon was not particularly significant because I don't believe he ever met Judge Nixon, but his cooperation in connection with the Government's efforts to prosecute Bud Holmes was significant.

The sentencing judge, Judge Parker, who is the chief judge of the Middle District of Louisiana, was so advised and he sentenced Drew Fairchild to six months in prison. There is an episode I didn't relate that is relevant to this.

We indicted Bob Royals, the airport manager, and Drew Fairchild was a witness in that case. That case was tried in Hattiesburg. Royals was convicted and Drew Fairchild was a key witness.

Mr. EDWARDS. Wiley Fairchild never spent any time in jail?

Mr. WEINGARTEN. Well, Wiley Fairchild went before Judge Carr, a judge in the Eastern District of Louisiana. He was sentenced to two months' incarceration. He spent the time in a halfway house in Jackson, Mississippi.

Mr. **Edwards**. And how about Bud Holmes?

Mr. **Weingarten**. He did not.

Mr. **Edwards**. None?

Mr. **Weingarten**. Bud Holmes was sentenced to a year in prison. He challenged the legality of the sentence. The United States opposed his challenge vigorously. The sentencing judge ruled for the United States.

Bud Holmes challenged the sentencing judge's ruling and he prevailed in a two-to-one opinion in the Fifth Circuit.

Mr. **Edwards**. So these three defendants really didn't do badly, when you think about it. They were accused of pretty serious crimes.

We have no further questions and, Mr. Stewart, you are recognized to question the witness for ten minutes. Upon request, I'm sure we can accommodate you for an additional period.

Mr. **Stewart**. Thank you. If I could do two things, one is I'd like to change chairs, and the other is I'd make a copy of our exhibits available to Mr. Weingarten in case I need to have him refer to it.

Mr. **Edwards**. Yes, please do.

Mr. **Stewart**. Forgive me; it's going to take a second to get organized here.

Good afternoon, Mr. Weingarten.

Mr. **Weingarten**. Good afternoon.

Mr. **Stewart**. First, you testified that Judge Weldy said it was unprecedented to—or almost unprecedented to pass a case to the files. Do you recall that?

Mr. **Weingarten**. After an individual pleads guilty.

Mr. **Stewart**. I'm sorry, OK.

Judge Weldy signed the order passing it to the files, didn't he?

Mr. **Weingarten**. Was it Weldy or was it McKenzie? I don't recall.

Mr. **Stewart**. Well, it's in the record. Shall we look?

Mr. **Weingarten**. If you say Weldy, I'll accept it.

Mr. **Stewart**. All right.

Now, I believe you also testified that Bud Holmes stated that he passed the case to the file primarily because of the phone call from the farm.

Mr. **Weingarten**. I think he——

Mr. **Stewart**. I want to make sure I have that right.

Mr. **Weingarten**. No. I'm not sure that's—I said Bud Holmes testified that that was certainly a factor in influencing him to do it.

Mr. **Stewart**. Do you recall that he testified that the big motivating thing for passing the case to the file was that Judge Weldy was leaving office and Bill Porter was upset that Weldy would throw out the plea bargain?

Mr. **Weingarten**. I'm certain that Bud Holmes testified at trial that a motivating factor in his decision to pass the case to file was the fact that they had made certain representations to Wiley Fairchild.

Mr. **Stewart**. OK. I don't think that was my question. My question was do you have a recollection that at pages 753 and 54 of the transcript, he testified that the big motivating thing that Bill Porter urged him that he was going to lose the plea bargain after Judge Weldy, and that would he please take care of it now.

Mr. WEINGARTEN. Mr. Stewart, I have no specific recollection of the transcript in this case. I know Bud Holmes testified that there were more than one reason why he passed the case to the file, but there was the fact that they had made representations to Wiley Fairchild that evening from the farm.

Mr. STEWART. Would it help you to hear the actual testimony?

Mr. WEINGARTEN. If you want to show me the entire testimony of Bud Holmes, that might be helpful.

Mr. STEWART. That's very long, of course.

Mr. WEINGARTEN. I don't dispute that Bud Holmes represented that he had more than one reason and that the plea agreement was one of them. I don't dispute that at all.

Mr. STEWART. OK, and do you agree that he said the big motivating thing was that Bill Porter was upset about Judge Weldy leaving office and not respecting the plea bargain?

Mr. WEINGARTEN. If you represent to this committee and to me that that's what the transcript says, I accept it without qualification.

Mr. STEWART. Thank you.

Now, do you remember how much Wiley Fairchild had paid for the mineral interests he transferred to Judge Nixon?

Mr. WEINGARTEN. When he initially purchased them?

Mr. STEWART. Yes.

Mr. WEINGARTEN. No.

Mr. STEWART. Do you recall that he——

Mr. WEINGARTEN. A pittance.

Mr. STEWART. A pittance?

Mr. WEINGARTEN. Yes.

Mr. STEWART. Do you recall that—let me try to refresh your recollection. At page 505 of the transcript, he said it was $200 to $300.

Mr. WEINGARTEN. If you represent that that's in the transcript, I accept it without qualification.

Mr. STEWART. OK, and he sold those interests for $9,500. He made many times more than he had paid for them, isn't that right?

Mr. WEINGARTEN. If you look at it that way, yes.

Mr. STEWART. Now, Bud Holmes was a very important witness r your case, I take it.

Mr. WEINGARTEN. Is that——

Mr. STEWART. Was he?

Mr. WEINGARTEN. Yes.

Mr. STEWART. OK, and the plea agreement gave you a right to subject Bud Holmes to a polygraph, didn't it?

Mr. WEINGARTEN. Yes.

Mr. STEWART. And you never gave him a polygraph?

Mr. WEINGARTEN. Bud Holmes was polygraphed.

Mr. STEWART. Well, he testified that he hadn't been.

Mr. WEINGARTEN. Bud Holmes was polygraphed on Petit Bois.

Mr. STEWART. On Petit Bois?

Mr. WEINGARTEN. Yes.

Mr. Stewart. OK, but he didn't get polygraphed on anything relating to Fairchild?

Mr. Weingarten. He did not.

Mr. Stewart. Did you interview Mr. Holmes before he testified before the grand jury in July of 1984?

Mr. Weingarten. I believe so.

Mr. Stewart. OK.

Mr. Weingarten. Was that the first time he testified in the grand jury?

Mr. Stewart. His first appearance in the grand jury was July of 1984.

Mr. Weingarten. He was interviewed. Whether or not I did the interview or the FBI did the interview or another prosecutor did the interview, I'm not sure.

Mr. Stewart. OK. Do you recall whether at that time he made any statements that were thought to be false statements by the Government?

Mr. Weingarten. Mr. Stewart, I don't recall.

Mr. Stewart. All right.

Mr. Weingarten. There's a 302——

Mr. Stewart. I'll move on. I have no 302. Let me make that representation.

You put him before the grand jury in July of 1984. Did he appear under subpoena?

Mr. Weingarten. Yes.

Mr. Stewart. And did he make any false statements under oath at that time?

Mr. Weingarten. He was charged later with perjury. I don't—perhaps you can help me. Did some of the perjury emanate from his initial grand jury appearance?

Mr. Stewart. Well, exhibit 32, subcommittee exhibit 32 is the indictment. In that, count two alleges that he did not meet—that he falsely denied meeting Drew Fairchild before the indictment by the State grand jury and he falsely testified to that in July of 1984.

Mr. Weingarten. Then, obviously, the conclusion was reached that Bud Holmes had testified falsely in the first grand jury.

Mr. Stewart. All right, and he appeared again—now, that issue, whether he had met Drew Fairchild before the State indictment came down, had nothing to do with Judge Nixon, did it?

Mr. Weingarten. Absolutely correct.

Mr. Stewart. So when he lied, then, he wasn't protecting Judge Nixon?

Mr. Weingarten. True.

Mr. Stewart. He was protecting Bud Holmes?

Mr. Weingarten. If he did lie—that's what he was charged with—true.

Mr. Stewart. Now, you put him before the grand jury in September of 1984 again. He carried over?

Mr. Weingarten. Right. That's the same grand jury.

Mr. Stewart. OK, and did he make any false statements under oath at that time?

Mr. Weingarten. Mr. Stewart, again——

Mr. Stewart. All right.

Mr. **Weingarten**. If some of the alleged perjury comes out of that second appearance, then obviously the conclusion of the Government was yes.

Mr. **Stewart**. All right. I don't mean to be tiresome about this. Exhibit 32, the indictment, count three alleges he falsely testified in September that he did not seek Drew Fairchild's case from the Federal Government?

Mr. **Weingarten**. I accept your representations.

Mr. **Stewart**. I'm corrected by co-counsel that it is exhibit 31; my error.

OK. Now, that issue whether he had sought Drew Fairchild's case from the Federal prosecutors or not had nothing to do with Judge Nixon, did it?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. So he wasn't lying to protect anybody but Bud Holmes?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. OK. You put him before the grand jury in February of 1985. This is his third appearance. To try to speed this up, I'll just tell you that you charged him with three counts of perjury out of that appearance, counts one, four and five of exhibit 31. Does that sound right?

Mr. **Weingarten**. If you say it, I believe it.

Mr. **Stewart**. OK. Was there ever an occasion when Bud Holmes testified under oath when you thought he had only told the truth one hundred percent?

Mr. **Weingarten**. I believe that once he reached his plea agreement with the United States that he was truthful.

Mr. **Stewart**. OK, and after that, from that point on he was truthful. Is that your view?

Mr. **Weingarten**. I only know of one occasion from that point on when he testified. I guess he testified in the grand jury after his plea.

Mr. **Stewart**. OK. Had you become skeptical of Mr. Holmes' ability or willingness to tell the truth under oath?

Mr. **Weingarten**. I was skeptical of Bud Holmes' testimony throughout, yes.

Mr. **Stewart**. OK. So you never really did stop being skeptical of Mr. Holmes?

Mr. **Weingarten**. That's correct.

Mr. **Stewart**. Now, at Drew Fairchild's Federal sentencing in July of 1985, you praised Mr. Fairchild for not puffing and you explained that a cooperating Government witness often embroiders upon the true facts in an effort to curry favor with the prosecutor.

Now, you may not recall that precise remark, but does that sound right to you?

Mr. **Weingarten**. It has happened and I'm sure—that sounds like something I would have said.

Mr. **Stewart**. It's a problem sometimes with Federal cooperating witnesses?

Mr. **Weingarten**. Sure.

Mr. **Stewart**. OK. Did you ever worry that with all of Mr. Holmes' problems with telling the truth under oath that he was saying things to curry favor with you?

Mr. **Weingarten**. I continued to be skeptical of Bud Holmes' testimony throughout.

Mr. **Stewart**. Now, Mr. Holmes said that he told Wiley on that phone call that he was going to pass the case to the files. Do you recall that?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK, and Wiley said he didn't say that?

Mr. **Weingarten**. That's correct.

Mr. **Stewart**. OK. And, in fact, Bud Holmes thought the conversation was in May of 1982. You testified about that, but it didn't get passed to the files until December, seven months later?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. Were you concerned that Mr. Holmes was puffing when he made that statement that he told Wiley about that?

Mr. **Weingarten**. Not puffing—oh, about the case passing to files?

Mr. **Stewart**. Yes, telling Wiley about the case passing to files.

Mr. **Weingarten**. No. That was not an instance where I was concerned. It was entirely conceivable to me that both men could have been making their best efforts at that time to testify truthfully to an event and one be incorrect.

I mean, simply because two witnesses testify inconsistently doesn't make one a liar. It was my opinion and the opinion of other members on the Government team that at that point, the point being when Fairchild and Holmes were cooperating, that both men were making best efforts to be truthful, and in large measures their testimonies were consistent.

Mr. **Stewart**. Well, Mr. Holmes claimed that Judge Nixon had asked him to find out if Wiley Fairchild had taped that call, and that Mr. Holmes ran off and asked Carroll Ingram about that. Do you remember that?

Mr. **Weingarten**. Sure.

Mr. **Stewart**. OK. Mr. Ingram said that Bud Holmes came to him, but it was three months later; it was after the July grand jury appearance. Do you recall that?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK, and you told the jury in your closing statement that the taping might only have been Holmes' idea. Do you recall that?

Mr. **Weingarten**. I don't remember exactly what I said.

Mr. **Stewart**. Were you skeptical of Mr. Holmes on this point?

Mr. **Weingarten**. I was skeptical of Mr. Holmes from the day I met him until the day I last saw him.

Mr. **Stewart**. But you were still positive that everything he testified at trial was true?

Mr. **Weingarten**. No. I was positive that Judge Nixon had committed perjury. That's what I was positive of.

Mr. **Stewart**. And when his testimony disagrees with Bud Holmes, whom you were always skeptical of, you believe Bud Holmes and you don't believe Judge Nixon. Is that right?

Mr. **Weingarten**. Well, Bud Holmes' testimony was corroborated in large measure in many respects.

Mr. **Stewart**. OK. You've talked about Carroll Ingram; he prepared the documents for Judge Nixon's investment. He was a significant witness in the case, I believe you said?

Mr. **Weingarten**. Sure.

Mr. **Stewart**. OK. Was he a credible witness, in your judgment?

Mr. **Weingarten**. I was skeptical of Carroll Ingram's testimony, but I believe generally speaking he was a very credible witness, sure.

Mr. **Edwards**. Mr. Stewart, you have used ten minutes. Do you request additional time?

Mr. **Stewart**. I do, Your Honor.

Mr. **Edwards**. You may proceed.

Mr. **Stewart**. Thank you.

Now, did you ever find any evidence——

Mr. **Edwards**. You may proceed.

Mr. **Stewart**. Thank you.

Was there any evidence at trial that Judge Nixon had proposed that Drew Fairchild's case be sent to the files?

Mr. **Weingarten**. That Judge Nixon had proposed that?

Mr. **Stewart**. Yes.

Mr. **Weingarten**. No.

Mr. **Stewart**. OK. There's no evidence that Judge Nixon talked to Wiley Fairchild about passing the case to the files?

Mr. **Weingarten**. The evidence to that effect was what I described; I mean, the conversation from the farm and the conversation in Wiley Fairchild's office.

Mr. **Stewart**. But it was Bud Holmes' idea, as you testified earlier, I think, to pass the case to the files?

Mr. **Weingarten**. Sure.

Mr. **Stewart**. OK.

Mr. **Weingarten**. When I say sure, I mean that's according to the evidence.

Mr. **Stewart**. Let me ask you about—now, count four of the indictment, which relates to the statement Judge Nixon made at the end of his grand jury appearance, that long statement he made—in the indictment, the claim is that Judge Nixon falsely denied trying to influence any official about Drew's case. Does that sound right to you?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. All right, and it was your position at trial that he had tried to influence Bud Holmes about Drew's case?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. All right. Now, Judge Nixon still denies that, and I assume that doesn't change your view.

Mr. **Weingarten**. It does not.

Mr. **Stewart**. All right. Now, Bud Holmes also denies that under oath that he understood Judge Nixon even to be trying to influence. I'd ask you actually to look at exhibit N-26, the declaration of Paul Holmes; it's dated February 29th, 1988. Have you seen this before when you were preparing your affidavit?

Mr. **Weingarten**. I was told about it. I didn't see it.

Mr. **Stewart**. All right. Can I ask you to review paragraphs two and three—paragraph one as well, I suppose?

Mr. **Weingarten**. OK.

Mr. **Stewart**. Now, that's a statement by Mr. Holmes that Judge Nixon, and I'm paraphrasing, of course, was not trying—he did not understand Judge Nixon to be trying to influence him. Does that have any impact on your view as to whether Judge Nixon influenced him?

Mr. **Weingarten**. No, it has no impact on my view of what Judge Nixon was doing in the car when he was putting in a good word for Drew Fairchild. I think that's the crux of the matter.

Mr. **Stewart**. OK.

Mr. **Weingarten**. Why else was he putting in a good word for a drug smuggler if he didn't want the case to be influenced? That's the issue as it was presented to the jury and I think that's the issue as it should be presented to this committee.

Mr. **Stewart**. But if Bud Holmes says that he wasn't influenced and he didn't understand Judge Nixon to be trying to influence it, you don't believe Bud Holmes?

Mr. **Weingarten**. Bud Holmes——

Mr. **Stewart**. No. Please try to answer my question.

Mr. **Weingarten**. I believe what—I don't know what Bud Holmes' motivation is in making this declaration. I know that Bud Holmes was a very close friend of Judge Nixon and it pained him deeply to have to testify against him, and that's the simple fact of the matter.

Now, whether or not Bud Holmes was trying to help his friend, Judge Nixon, with this declaration, I have no idea. I was not party to it. I don't know why he made it. I know what he testified to at trial and I know what the evidence at trial was, and I'm absolutely convinced that Judge Nixon would not have sought to put in a good word for a drug smuggler when he didn't know anything about the merits of the case if he was not trying to influence him.

Mr. **Stewart**. Wasn't Bud Holmes' testimony that Judge Nixon said Wiley asked him to put in a good word?

Mr. **Weingarten**. I'm sorry?

Mr. **Stewart**. Wasn't Bud Holmes' testimony that Judge Nixon said that Wiley had asked him to put in a good word? He didn't say Judge Nixon said I'm putting in a good word?

Mr. **Weingarten**. In my humble opinion, that's a difference without a—that's a distinction without a difference.

Mr. **Stewart**. Fine.

Now, I just need to be sure, so I understand what you're saying—I believe what you've said is that you don't care what Mr. Holmes says under oath now.

Mr. **Weingarten**. No, I don't say that at all. I have no responsibility on this case anymore. The United States will handle it competently. I don't know what this declaration is all about. I know what Bud Holmes did at trial and I know what the evidence was. I mean, I have no opinion as to this declaration.

Mr. **Stewart**. But if I were to tell you that Bud Holmes denies under oath that Judge Nixon influenced him or that Judge Nixon tried to influence him, you don't believe that?

Mr. **Weingarten**. I know what Bud Holmes testified at trial.

Mr. **Stewart**. But you don't believe him now. You believe what he said at trial, if it was supportive of that?

Mr. WEINGARTEN. I repeat, I don't know the circumstances of this. I know what he testified at trial.

Mr. STEWART. Now, when you started this investigation, you were investigating how Drew Fairchild's case ended up in State court, isn't that right?

Mr. WEINGARTEN. That was part of the investigation.

Mr. STEWART. Well, that's what you told Judge Nixon, isn't it?

Mr. WEINGARTEN. I also told Judge Nixon we were investigating the mineral interests that he had received from Wiley Fairchild.

Mr. STEWART. OK, and was what you told him true?

Mr. WEINGARTEN. Sure.

Mr. STEWART. OK, and was there anything else you were investigating at the time?

Mr. WEINGARTEN. Me, personally?

Mr. STEWART. I'll start there, about Judge Nixon.

Mr. WEINGARTEN. I don't recall. There were other investigations that the grand jury handled, certainly, but I don't recall when they started.

Mr. STEWART. You mean Petit Bois Island?

Mr. WEINGARTEN. Well, Petit Bois Island, I had nothing to do with. There were other investigations as well.

Mr. STEWART. OK.

Mr. WEINGARTEN. My recollection is that those investigations started after my interview with Judge Nixon.

Mr. STEWART. So you think you told him everything that you were working on at the time?

Mr. WEINGARTEN. I think that's correct, yes.

Mr. STEWART. OK. Now, let me just ask quickly—no; I'm sorry. I'm getting confused here.

Skip Jarvis' allegation which you mentioned was that Judge Nixon had been paid off to get the case out of Federal hands and into State hands, isn't that right?

Mr. WEINGARTEN. Well, I think it's broader than that. I mean, there were several points, several parts of it, but he alleged that he believed that a bribe had been paid to Judge Nixon.

Mr. STEWART. OK, and you thought Judge Nixon might have worked with Bud Holmes to arrange that, the transfer?

Mr. WEINGARTEN. I never concluded that. I thought that it was an area that I needed to explore.

Mr. STEWART. OK, and if he had done so, if Judge Nixon had worked with Bud Holmes to get the case passed from Federal hands to State hands, that would have given you an official act under the gratuity statute, right?

Mr. WEINGARTEN. Well, it probably would have been a bribe.

Mr. STEWART. OK, because what you testified to before was that you didn't ever get any trial testimony about a specific official act that Judge Nixon might have performed in return for the mineral investment.

Mr. WEINGARTEN. Correct. There was evidence, I believe, of expectations that Wiley Fairchild had, but there was certainly no evidence of an official act by Judge Nixon.

Mr. STEWART. All right, and when did you find out that Judge Nixon had nothing to do with that transfer of the case from Federal hands to State hands?

Mr. WEINGARTEN. I can't give you a date. I think we were satisfied eventually that the case—as it came out at trial how the case passed from George Phillips to Bud Holmes.

Mr. STEWART. So it wasn't until trial that you were convinced?

Mr. WEINGARTEN. No, no. I don't know exactly when I was.

Mr. STEWART. Some time between your interview and then the trial, 22 months later?

Mr. WEINGARTEN. Early on, early on.

Mr. STEWART. Early on?

Mr. WEINGARTEN. Yes.

Mr. STEWART. Within the first six months?

Mr. WEINGARTEN. I'd just be guessing. I don't know.

Mr. EDWARDS. Mr. Stewart, do you desire another ten minutes?

Mr. STEWART. I'm sorry, sir. I do.

Mr. EDWARDS. You may proceed.

Mr. SENSENBRENNER. Mr. Chairman, I would like to find out how long Mr. Stewart plans on cross-examining this witness.

Mr. STEWART. Your Honor, if it is in order for me to respond directly, my expectation would be to take some time more, probably——

Mr. EDWARDS. I want to assure you, Mr. Stewart, that we are going to be fair to you. As long as questions are appropriate, which they are, you may proceed.

Mr. STEWART. All right. Just for scheduling purposes, I am probably no more than a quarter of the way through what I have intended.

Now, Bud Holmes' testimony was that he took over the case from the Federal prosecutors to help Bill Porter collect his fee, isn't that right?

Mr. WEINGARTEN. Well, that's partially correct. In fairness to Holmes, Holmes said he inevitably would have had to make a presentation to the local grand jury as to what happened in the case. But certainly his effort to get the case at that point was influenced by Porter's conversations with him about the lack of a fee.

Mr. STEWART. Well, didn't he just say that's why he did it?

Mr. WEINGARTEN. Well, I think he coupled it with the explanation I also provided.

Mr. STEWART. All right, and he testified that he told the U.S. Attorney that was why he did it, why he wanted the case?

Mr. WEINGARTEN. I don't recall him saying that he was indicting Drew Fairchild to get a fee for Porter.

Mr. STEWART. Let me just read this to refresh your recollection, if I could. It's page 732 of the transcript, Mr. Holmes' testimony on direct examination by you. "I picked up the phone and I called George"—that's George Phillips. "I asked George about it, told him that Bill was in my office"—that's Bill Porter—"that Bill was fussing about the fact that he hadn't gotten paid. I wanted to present it to the grand jury down here, not for indictment necessarily, and George told me, he said, well, he said, we never did indict Watkins, the pilot, and we never did indict Drew, and why don't you go ahead and handle the case down there?"

So he did say that he told the U.S. Attorney that's why he wanted the case.

Mr. **Weingarten**. Well, I think your implication was unfair. I think there's a big difference between your question that he told Phillips he was taking the case to get Porter paid and what he actually said.

Mr. **Stewart**. He told Phillips that he was taking the case because Porter was fussing about his fee.

Mr. **Weingarten**. No, I don't think that's a fair reading of that. I think what he was saying is Porter is here, he's fussing about his fee and, by the way, what's going on with the case? That's my interpretation of it.

Mr. **Stewart**. OK. Bill Porter was a good friend of Bud Holmes, wasn't he?

Mr. **Weingarten**. That's my understanding.

Mr. **Stewart**. OK. Now, you told the jury in this case that as long as Holmes handled the case fairly and well, you weren't sure it's entirely disgraceful for him to take the case to help Porter collect his fee. Do you remember that?

Mr. **Weingarten**. Well, I think if you want to pursue it, I think it would be fair to read the whole thing. I think I indicated it was an absolute disgrace for a lawyer to go to a prosecutor and say indict my guy to get a fee, and it would have been equally disgraceful for the district attorney to do just that, but that if, in fact, Holmes was honest when he said that he would have presented this matter to the Hattiesburg grand jury under any circumstances and he was simply trying to do the fair thing and, in addition, he had his buddy Porter looking for a fee, it wouldn't be entirely disgraceful. It only would be partially disgraceful.

Mr. **Stewart**. Well, now, wait a second. At the time, Mr. Porter had a civil case pending against Drew. You mentioned that?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK. That's exhibit N-2 of Judge Nixon's exhibits.

Mr. **Weingarten**. Yes.

Mr. **Stewart**. And I assume you're familiar that it's against the canon of ethics even to suggest that criminal charges will be brought to settle a criminal case?

Mr. **Weingarten**. Sure.

Mr **Stewart**. OK. That's disciplinary rule 7-105(a). You cannot present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

Mr. **Weingarten**. Mr. Stewart, I really think that was one area where the defense and the prosecution agreed; that if Holmes reached out for the case to get his buddy paid that it would have been an absolute disgrace.

Mr. **Stewart**. And you don't think he did?

Mr. **Weingarten**. Holmes said that was one of his motivating factors. I believe that public pressure in Hattiesburg would have required Holmes to make some presentation to his local grand jury. I believe that.

Mr. **Stewart**. You recall that he made that allegation?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. You wired up Skip Jarvis and he went in to talk to Wiley?

Mr. **Weingarten**. I certainly did not.

Mr. **Stewart**. Well, the Government.

Mr. **Weingarten**. The FBI did.

Mr. **Stewart**. Fine, and he went in and talked to Wiley?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. And Wiley made that charge again?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK, and that's what Wiley he testified he told Judge Nixon on that fatal day, isn't it?

Mr. **Weingarten**. Sure.

Mr. **Stewart**. OK, and he surely was pressured by Mr. Holmes and Mr. Porter, whether he was technically blackmailed or not, wasn't he?

Mr. **Weingarten**. Sure.

Mr. **Stewart**. Let me ask you about count three of the indictment. The question you asked there was whether Bud Holmes discussed Drew Fairchild's case with you, and the judge answered that it was not, to his recollection, and you charged that as a false statement.

Please explain to me what was false about it.

Mr. **Weingarten**. I believe there was a discussion about Drew Fairchild's case on the way to the farm and at the farm.

Mr. **Stewart**. OK. Let's talk about that for a second. Bud Holmes said that Carroll Ingram and Judge Nixon came to his office that evening. Do you recall that?

Mr. **Weingarten**. I'll accept that.

Mr. **Stewart**. OK. Carroll Ingram said he didn't go see Bud Holmes with Judge Nixon at that time. Do you recall that?

Mr. **Weingarten**. That was his recollection.

Mr. **Stewart**. OK, and Judge Nixon said he didn't go to Bud Holmes' office either. He drove himself out to the farm, isn't that right?

Mr. **Weingarten**. I don't specifically recall, but I accept your representation.

Mr. **Stewart**. OK, so if there was a conversation in the car on the way out there, it's only Bud Holmes and not Carroll Ingram or Judge Nixon who say there could have been one?

Mr. **Weingarten**. Bud Holmes was the one who testified directly to the conversation in the car between Bud Holmes and Judge Nixon. They were the only two in the car.

Mr. **Stewart**. Right, and Judge Nixon said he drove himself out and Carroll Ingram doesn't corroborate Bud Holmes as to how they got in the car.

Mr. **Weingarten**. Bud Holmes did not testify that Carroll Ingram was in the car.

Mr. **Stewart**. He testifies that Carroll Ingram was in his office with Judge Nixon before they drove out there, and Carroll Ingram says no.

Mr. **Weingarten**. That's right.

Mr. **Stewart**. OK. Now, that's the only discussion you have. There's no other occasion, no time they're sitting on a golf course or they're going to a concert. This is the one event that you're charging in count three?

Mr. **Weingarten**. The trip out to the farm.

Mr. **Stewart**. And when they're at the farm?

Mr. **Weingarten**. Yes.

Mr. STEWART. All right. Now, in April of 1984, in your interview—and we only heard part of it, of course, but we did hear this part. It's exhibit 22. At page 28, you asked Judge Nixon if he'd ever discussed Bud Holmes' cases with Bud. Do you remember that?

Mr. WEINGARTEN. Not specifically, but I'm sure I said it.

Mr. STEWART. Well, it's exhibit 22, if it helps you, page 28. I'm particularly interested that he said in response, "I think a few murder cases we discussed." I don't know; it's about eight lines down.

Mr. WEINGARTEN. I see it, I see it.

Mr. STEWART. OK. What did you understand Judge Nixon's comment to mean, "I think a few murder cases we discussed?"

Mr. WEINGARTEN. I took it at face value.

Mr. STEWART. What is its face value?

Mr. WEINGARTEN. That they discussed murder cases that Bud Holmes prosecuted.

Mr. STEWART. Do you think they gossiped about the lawyers in that case?

Mr. WEINGARTEN. I don't have a clue.

Mr. STEWART. Do you think they talked about the facts of the case?

Mr. WEINGARTEN. I don't have a clue.

Mr. STEWART. You didn't have any idea what it meant?

Mr. WEINGARTEN. No.

Mr. STEWART. You can't know what it means unless you followed up, can you?

Mr. WEINGARTEN. I had no interest in the murder cases that Bud Holmes and Judge Nixon would have discussed.

Mr. STEWART. All right. Why didn't you try to find out what he meant when he said he had discussed those cases?

Mr. WEINGARTEN. It didn't seem remotely relevant to what I was doing.

Mr. STEWART. OK. So you never determined that one way or another?

Mr. WEINGARTEN. Obviously not.

Mr. STEWART. OK. In your judgment, as an attorney, how long does a conversation have to be about a case in order to become a discussion of a case?

Mr. WEINGARTEN. It could be two seconds.

Mr. STEWART. Two seconds?

Mr. WEINGARTEN. Two seconds. It could be very short, it could be very long. I think it depends upon the circumstances. It depends upon the import of what's being said.

Mr. STEWART. Let me ask you a hypothetical question. You see one of your partners tomorrow and you say this Nixon case is going to drive me crazy; the lawyer is a jerk. You know, is that a discussion about the Nixon case?

Mr. WEINGARTEN. I think if there's a little give-and-take about the lawyers, sure.

Mr. STEWART. OK. So if I come back two years later and I ask your partner did Reid Weingarten ever discuss the Nixon case with you, then he's got to say yes or it's perjury?

Mr. Weingarten. I think if it's relevant to a grand jury investigation and the individual testifies deliberately in a false manner, sure.

Mr. Stewart. That exchange I just gave you?

Mr. Weingarten. It could be, sure, if it was significant to the investigation.

Mr. Stewart. OK. Back to count three, the terms of it, you were investigating how Drew Fairchild's case got transferred to State officials, and that's one of the things you were looking at, as well as the mineral interests, correct?

Mr. Weingarten. Yes.

Mr. Stewart. OK.

Mr. Weingarten. Well, no. I think it's more fair to say we were looking at the—as I said to Judge Nixon in the interview, the Drew Fairchild case from top to bottom.

Mr. Stewart. All right. I want to ask you what you meant when you asked the question in the grand jury if Bud Holmes had discussed Drew Fairchild's case with him.

Mr. Weingarten. If the two men had ever talked about the case.

Mr. Stewart. OK. Were you asking for Judge Nixon to list every mention of Drew Fairchild's case between the two of them, no matter how insignificant?

Mr. Weingarten. I was covering the waterfront. Judge Nixon had said he had not discussed—absolutely had not discussed the case with any of the principals. I was confirming that fact for the grand jury.

Mr. Stewart. OK, but my question was were you asking him to list every time the case was mentioned, no matter how glancing the exchange?

Mr. Weingarten. I was asking him to do the best he could to provide the grand jury with relevant information, with him understanding the parameters of the investigation. That's what I was doing.

Mr. Edwards. Mr. Stewart, do you desire an additional ten minutes?

Mr. Stewart. Thank you, sir. I do.

Mr. Edwards. You may proceed.

Mr. Stewart. Can you not answer my question yes or no?

Mr. Weingarten. I think I'm doing my very best to answer your question. You've asked me what was in my mind in 1984 when I was posing questions to Judge Nixon. I wanted Judge Nixon to do his best to provide the grand jury with relevant information.

Mr. Stewart. OK. My question, though, is when you asked the question, were you asking him to list every mention of Drew's case. Is that what you had in mind?

Mr. Weingarten. I don't know what I had in mind in 1984, other than the broad description I've provided you three times.

Mr. Stewart. Well, would you agree with me that if you wanted him to list every mention of the case, no matter how glancing or how not substantive Judge Nixon might have viewed it, you didn't ask that question, did you?

Mr. Weingarten. I certainly didn't ask him, give me the most—give me every insignificant conversation you had about Drew Fairchild. But I had gone through the interview with Judge Nixon where he made a complete denial of any contact whatever.

Mr. **Stewart**. Let me ask you a couple more hypothetical questions. Let's take the question you asked, did Bud Holmes discuss the Drew Fairchild case with you. What if Judge Nixon had answered your question, no, we didn't discuss Drew's case, but it was mentioned once? Is that a false statement?

Mr. **Weingarten**. You're asking a legal question that's very, very difficult to answer on the spur of the moment. When you consider perjury charges, you carefully sift through the evidence. You sit down with a bunch of other lawyers and you make a careful legal determination.

I'm very reluctant to give an off-the-cuff opinion about such matters.

Mr. **Stewart**. You spent a lot of time studying the perjury statutes and the law of perjury, didn't you?

Mr. **Weingarten**. I've spent time in my life understanding the perjury statutes, sure.

Mr. **Stewart**. OK, and I just want to be fair here. You just don't think you can answer this question, whether this would be a false statement?

Mr. **Weingarten**. I don't want to give an off-the-cuff legal opinion about something as serious as this.

Mr. **Stewart**. I have to pursue this, Mr. Weingarten. This is the only chance I get to question you. What if Judge Nixon had made a distinction in his own mind and he decides discuss does not mean mention? Is that a false statement, then, to say he didn't discuss it?

Mr. **Weingarten**. Is it technically false? Is it legally false? I mean, you're asking me an almost impossible question.

Mr. **Stewart**. So you decline to answer?

Mr. **Weingarten**. I'll answer it the best I can. If Judge Nixon had said—if he came forward—if he said in the grand jury—if he clarified his thinking—I mean, yes, I find it almost impossible to answer your question.

Mr. **Stewart**. As long as we're talking about "discuss," you raised a question as to whether it was an issue at trial. Do you recall that a jury instruction was requested on the definition of "discuss?"

Mr. **Weingarten**. Yes.

Mr. **Stewart**. And it was denied by the court?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. So it was attempted to be placed in issue by Judge Nixon at trial as to what the meaning of "discuss" was in count three of the indictment?

Mr. **Weingarten**. When the question was posed to me, I thought it was in an evidentiary sense.

Mr. **Stewart**. All right, but the question was raised at trial and Judge Nixon attempted to argue it as part of his defense?

Mr. **Weingarten**. His lawyer wanted an instruction on it and it was denied.

Mr. **Stewart**. It's OK to say yes now and then.

Mr. **Weingarten**. Well, I think I have the opportunity to clarify answers.

Mr. Stewart. I want to stick with this for just a couple more hypotheticals.

Mr. Weingarten. OK.

Mr. Stewart. What if Judge Nixon had answered, no, we didn't discuss Drew's case, but I did pass on to him that Drew's father accused him of blackmail? Is that a false statement?

Mr. Weingarten. It would certainly not be a complete statement.

Mr. Stewart. OK, so you don't think that's true either?

Mr. Weingarten. No, I don't. I think the core of the charge in count four was that he attempted to influence the case; that he put in a good word for Drew Fairchild. If he said that, it would not have been a false statement.

Mr. Stewart. In count three? Count three wasn't about influence.

Mr. Weingarten. OK, count three.

Mr. Stewart. Influence has nothing to do with count three, does it?

Mr. Weingarten. The core of the discussion between Judge Nixon and Bud Holmes was the effort on Judge Nixon's part to put in a good word.

Mr. Stewart. But it's only Bud Holmes who says that happened, right?

Mr. Weingarten. Well, I think Carroll Ingram corroborates it in a substantial way.

Mr. Stewart. All right, and Wiley Fairchild says that all he talked to Judge Nixon about that day was his blackmail complaints, isn't that right?

Mr. Weingarten. And his dissatisfaction with the way the case was being handled, the unfairness between Drew Fairchild being prosecuted and Robert Royals getting a pass. He certainly discussed that.

Mr. Stewart. And he testified he never discussed Drew's case?

Mr. Weingarten. He testified about all things relating to Drew's case. His conclusion was that was not Drew's case. He testified about the juxtaposition between Royals and Drew's case. That certainly—a fair characterization of that would be he's talking about the prosecution of his son.

Mr. Stewart. You make a good point, Mr. Weingarten. So Mr. Fairchild, then, concluded that whether he discussed the case or not did not include matters that might relate somehow to the case. That would be a fair summary of his testimony.

Mr. Weingarten. His testimony speaks for itself.

Mr. Stewart. How old a man was Mr. Fairchild at the time of the trial?

Mr. Weingarten. Seventies, early seventies.

Mr. Stewart. OK, and his son, Drew, how old was he at the time of the trial?

Mr. Weingarten. Fifty.

Mr. Stewart. This is not some poor child who has lost his way, Mr. Drew Fairchild?

Mr. Weingarten. He definitely was not, no.

Mr. Stewart. Now, I want to ask you about an event that came out at trial, and you mentioned a concern about a Rule 6 order, but

I'm only relying on the trial transcript here; I hope you won't have a problem with any of my questions.

Carroll Ingram testified during trial that during his grand jury appearance in July of 1984, he'd been asked if he had discussed the Drew Fairchild narcotics matter with Judge Nixon. Do you recall that?

Mr. WEINGARTEN. Yes.

Mr. STEWART. And he said no in the grand jury.

Mr. WEINGARTEN. Correct.

Mr. STEWART. He said he had not discussed the Drew Fairchild narcotics matter with Judge Nixon, correct?

Mr. WEINGARTEN. Correct.

Mr. STEWART. And he did not tell you about the exchange he later told you about where Judge Nixon reported about the phone call at the farm?

Mr. WEINGARTEN. Correct.

Mr. STEWART. All right. Why was that not a false statement by Carroll Ingram when he said to the grand jury, I did not discuss the Drew Fairchild narcotics matter with Judge Nixon?

Mr. WEINGARTEN. It may or may not have been a false statement. I mean, I think your ultimate question is why wasn't he prosecuted for it, and I'd be happy to share with you the reasons.

Mr. STEWART. Well, let's start with the first question. Was it a false statement?

Mr. WEINGARTEN. It's arguable; it's a close question. I mean, I think the question was posed, did he discuss—did Carroll Ingram discuss the Drew Fairchild case with Judge Nixon. Carroll Ingram was on the receiving end of information from Judge Nixon that he had done a favor for Wiley Fairchild vis-a-vis the kid's case and he sensed that the purpose of him receiving that information was Judge Nixon wanted more oil deals.

There was no evidence of any response from Carroll Ingram. There was no evidence of an exchange. If you want to perceive the thing as being technically false, that's fine. It all went into the mix in a prosecutive decision in Carroll Ingram's case.

Mr. STEWART. OK. I think you anticipated where I was going, which is your reason for concluding that it wasn't a false statement—at least what you told the jury was that Judge Nixon had done most of the talking with Carroll Ingram.

Mr. WEINGARTEN. All the talking.

Mr. STEWART. OK.

Mr. WEINGARTEN. Carroll Ingram was receiving information from Judge Nixon.

Mr. STEWART. OK, so you can make that distinction. It's not a discussion if Mr. Ingram is just sitting there saying uh-huh, uh-huh, then what happened. That's not a discussion for Carroll Ingram?

Mr. WEINGARTEN. If there's an exchange, there can be a discussion. If one person is simply receiving information from another, it's not likely that that would be a discussion.

Mr. STEWART. So when Carroll Ingram testified at trial, he was pretty unreconstructed on this issue. He testified at page 1167, or thereabouts, and I'm quoting, "I have never had a discussion with Judge Nixon about the Drew Fairchild matter."

Do you think he's—now, he's not saying Judge Nixon ever discussed it with me. He's saying he has never had a discussion with Judge Nixon.

Mr. **Weingarten**. His view of the issue would be as I just stated it, that he would have been on the receiving end of information and he would not have viewed that as a discussion.

Mr. **Stewart**. And you think that's true, that's a fair position for him to take?

Mr. **Weingarten**. It's an arguable position.

Mr. **Stewart**. And it might well be the position that a witness who hears the question would take.

Mr. **Weingarten**. I can't jump into a witness' head. It was an issue that we considered when we decided what to do with Carroll Ingram.

Mr. **Stewart**. Of course, that's what the subcommittee has to do, but we've got at least two other witnesses now who had conversations relating to Drew Fairchild's case who did not tell you that they were discussions about the case because they didn't think so, isn't that right, both Wiley Fairchild and Carroll Ingram?

Mr. **Weingarten**. That's what they've said.

Mr. **Stewart**. All right, and you didn't indict them for perjury with respect to those statements?

Mr. **Weingarten**. Not with respect to those statements, no.

Mr. **Edwards**. Mr. Stewart, do you desire to be recognized for another ten minutes?

Mr. **Stewart**. Yes, sir, thank you.

Mr. **Edwards**. You may proceed.

Mr. **Stewart**. When Mr. Fairchild testified before the grand jury, or when he met with you or he testified at trial, was he a confident and forthright man or did he seem more a nervous type?

Mr. **Weingarten**. Mr. Fairchild is a complex man. I don't presume to understand him at all.

Mr. **Stewart**. Well, my question was how did he appear. Did he appear as a confident and forthright man or did he appear nervous, scared?

Mr. **Weingarten**. I don't remember him appearing scared. I think he was unfamiliar with the Federal process. I think that caused him some unease.

Mr. **Stewart**. OK.

Mr. **Weingarten**. He's a very—he can be a very assertive man on occasion.

Mr. **Stewart**. I'll move on. When you met with Wiley Fairchild's lawyers and with Wiley before the deal was agreed to, did you make it clear to him that he could get a deal if he gave incriminating information against Judge Nixon?

Mr. **Weingarten**. No, no. Wiley Fairchild contacted me through his attorneys. I didn't reach out for Wiley Fairchild and advise him that he could get a deal if he incriminated Judge Nixon.

Mr. **Stewart**. OK. That wasn't my question. My question was when you met with him and his counsel, did you make it clear that he could get a deal if he gave incriminating information about Judge Nixon.

Mr. WEINGARTEN. I made it clear that we would consider his proffer. We would evaluate it, and if he wanted to have plea discussions following the evaluation, we'd be interested.

Mr. STEWART. All right. Let me ask you to look at exhibit N-25 in our exhibit book. It's the declaration of John Baltar. Can you identify who Mr. Baltar is?

Mr. WEINGARTEN. Mr. Baltar is an individual from Mississippi who has some relationship to Wiley Fairchild.

Mr. STEWART. He tended to be with Mr. Fairchild on occasion when you met with Mr. Fairchild?

Mr. WEINGARTEN. He was like a companion or an employee. I'm really not sure what the relationship is or was.

Mr. STEWART. All right. In paragraph three, Mr. Baltar in his declaration, which was signed under oath on March 4th of 1988, states, and I quote, "In several conversations with Mr. Fairchild during which I was present, Federal prosecutor Reid Weingarten stated that if Mr. Fairchild could give him a smoking gun that would convict Judge Nixon, Mr. Fairchild would not be indicted." Did you make that statement?

Mr. WEINGARTEN. I definitely did not. I have no idea what Baltar is talking about there. The reference to the smoking gun came from Wiley Fairchild's attorneys. I have no recollection of conversations I would have had with Fairchild prior to him being indicted.

Mr. STEWART. So Mr. Baltar is making that up?

Mr. WEINGARTEN. I don't know what Mr. Baltar is doing, Mr. Stewart.

Mr. STEWART. Now, when the plea deal was made with Wiley Fairchild, you told Mr. Fairchild, or his attorney, I think is more accurate, that you would move to dismiss any unsupportable charge in his case, is that right?

Mr. WEINGARTEN. I think those conversations came later. Wiley Fairchild would vacillate from contrition to an adamant insistence that he committed no crime. When he was in the latter phase, he would make—usually through his attorneys, he would make inquiry whether or not the Government would ever dismiss his case.

And the response was the standard response that prosecutors always make. The Government will dismiss any unsubstantiated charge.

Mr. STEWART. OK. Could you please look at exhibit N-29? It's the affidavit of Barry Hess. It was submitted by the Government in opposing our motion on May 12, 1988. You knew Mr. Hess as Wiley Fairchild's lawyer, did you not?

Mr. WEINGARTEN. Yes.

Mr. STEWART. All right. There's a statement at the end of paragraph two, and I'm quoting, "After the details had been agreed upon"—he's talking about the plea agreement—"Mr. Weingarten told me as an aside that if the evidence ultimately showed that no gratuity had been paid, he would dismiss the charge against Mr. Fairchild," close quote. Well, he also says Mr. Weingarten may have further stated that in view of Mr. Fairchild's grand jury testimony, it was highly unlikely that dismissal would occur.

Mr. WEINGARTEN. I had such conversations with people representing Fairchild subsequent to the deal. They made persistent inquiry whether or not there would be any circumstances that would cause the United States to dismiss the charges against Fairchild. My answer was always the same.

Mr. **Stewart**. OK, but this indicates that you told him; it doesn't indicate that he asked you.

Mr. **Weingarten**. I have no recollection of that. I think I was always solicited by Fairchild or importuned by Fairchild and his people on this subject.

Mr. **Stewart**. So Mr. Hess is wrong about this?

Mr. **Weingarten**. My recollection is different.

Mr. **Stewart**. What message were you trying to convey when you said that you might drop the charges if you came convinced that they were unsupportable?

Mr. **Weingarten**. I was answering questions from the Fairchild camp, as the prosecutor must. I was indicating—I was passing along no message. I was simply representing to him what I had represented to other people in the course of my prosecutorial career.

Mr. **Stewart**. What was Wiley Fairchild's reaction to your remark when you made the remark?

Mr. **Weingarten**. I don't recall ever saying it to Wiley Fairchild. I think I said it to representatives of Wiley Fairchild.

Mr. **Stewart**. Which representatives?

Mr. **Weingarten**. I would always couple the remark, Mr. Stewart, by saying that there was absolutely no likelihood of this happening, given the fact that Fairchild has repeatedly made statements that are absolutely consistent with him passing along an illegal gratuity to a public official. He could have had no reasonable expectation that the United States would move to dismiss this count based on anything that I said.

Mr. **Stewart**. OK. You refused to make that—you do agree, though, that you refused to make that commitment part of the plea bargain, the written plea bargain?

Mr. **Weingarten**. I was never asked to.

Mr. **Stewart**. OK. It's not part of the plea bargain?

Mr. **Weingarten**. I was never asked to. There was never a discussion, it was never on the table, it was never an issue.

Mr. **Stewart**. All right, and Mr. Hess' statement, you disagree with?

Mr. **Weingarten**. Mr. Hess' statement said after the plea agreement was cut, there was a conversation between Hess and me. I'm sure there was.

Mr. **Stewart**. OK, so now you say Mr. Hess is right?

Mr. **Weingarten**. My recollection is that the issue was presented to me, not that I volunteered it, and I'm certain I'm right on that.

Mr. **Stewart**. OK.

Mr. **Weingarten**. But I don't think Mr. Hess contradicts that there.

Mr. **Stewart**. All right. It was part of your plea bargain, though, that you agreed to recommend no jail time for Wiley Fairchild, isn't that right?

Mr. **Weingarten**. That's correct.

Mr. **Stewart**. OK. Now, did you discuss with Wiley Fairchild the procedures for getting a pardon?

Mr. **Weingarten**. I don't recall discussing it with Fairchild. I recall discussing it—I could have. I recall discussing it with representatives of Fairchild, probably Wallace Gunn, probably Baltar, and maybe Hess.

Mr. **Stewart**. Wallace Gunn, that's John Baltar, and Barry Hess?

Mr. **Weingarten**. I think I'm correct.

Mr. **Stewart**. All right.

Mr. **Weingarten**. I recall discussing this subject frequently, too. There were frequent inquiries as to the pardon procedure. My answer to that question was always the same.

Mr. **Stewart**. And what was that?

Mr. **Weingarten**. That there was a formal procedure in the United States Department of Justice. There's a pardon attorney. My only role in it would be undoubtedly the pardon attorney would request information from the prosecuting attorney as to the extent of this person's criminality and the extent of his cooperation.

We also, I'm certain, would have told him that typically five years passed between conviction and pardon. We would have told him the rules and regulations.

Mr. **Stewart**. OK. Did you form an impression as to whether Wiley Fairchild was eager for a pardon?

Mr. **Weingarten**. There were certainly occasions when it was clear that Wiley Fairchild wanted his criminal charges dropped, expunged, disappear in some way or another.

Mr. **Stewart**. All right, and I think you just said that you explained to Wiley that the pardon officials would ask you about his cooperation with the Government.

Mr. **Weingarten**. I don't recall saying that to Wiley. I think——

Mr. **Stewart**. I'm sorry.

Mr. **Weingarten**. —all the inquiries came from Wiley's representatives.

Mr. **Stewart**. I stand corrected.

Mr. **Weingarten**. I may have said it to Wiley, but I don't recall.

Mr. **Stewart**. OK, but at the very least you did explain that they would come to you?

Mr. **Weingarten**. An inquiry would come. The specific question would be what role do you play.

Mr. **Stewart**. OK, and you made it clear that you played a role?

Mr. **Weingarten**. There could be no reasonable expectation of me getting Wiley Fairchild a pardon based on anything I said. I limited my comments to my role to be that, certainly, if the pardon attorney ever entertained his petition, the prosecuting attorney would be asked as to the facts of the case.

Mr. **Stewart**. And also the extent of his continuing cooperation, isn't that right?

Mr. **Weingarten**. Obviously.

Mr. **Stewart**. All right. So whatever you continued to tell him—I'm sorry; strike that.

Whatever Mr. Fairchild continued to tell you or to cooperate with you, he understood could be an issue with the pardon attorney and you would have a role in that?

Mr. **Weingarten**. To the extent I was involved in the case. The United States obviously has an obligation to make the pardon attorney aware of all the facts and circumstances of the case.

Mr. **Stewart**. OK. Now, John Baltar gave you a jury survey, didn't he, before Judge Nixon's trial, a survey of people in the south Mississippi area?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK, and that was to help you prepare for jury selection in the Nixon case?

Mr. **Weingarten**. I really think it was—I mean, my subjective, personal opinion is that it was to show me what a big-time operator John Baltar was. Now, whether or not it was to help me in the Walter Nixon case, I don't know. I mean, we frankly viewed it as silly.

Mr. **Stewart**. Have you seen that Mr. Baltar said that he did it with Wiley Fairchild's approval?

Mr. **Weingarten**. I don't recall that. I mean, if it says that, it says that. I remember Baltar giving it to me and being very proud of it.

Mr. **Stewart**. OK. Now, he also helped you with jury selection, too, didn't he?

Mr. **Weingarten**. Baltar was omnipresent during the jury selection. He was like a gadfly. He made comments about the process. He volunteered information about people, about geography. He absolutely had no impact on what the Government did during the jury selection process.

Mr. **Stewart**. But it was clear Wiley Fairchild had sent him there to curry favor with you, wasn't it?

Mr. **Weingarten**. That really is not clear. It was clear to me from the beginning that John Baltar's motivations for doing things are unknown to me, unknown to the Government, and Fairchild may have sent him and he may not have sent him.

Mr. **Stewart**. But Wiley was trying to be as helpful as possible with you, wasn't he?

Mr. **Weingarten**. Once Wiley Fairchild started cooperating, I believe Wiley Fairchild was being as cooperative with the Government as he could.

Mr. **Stewart**. Yes. Now, I asked you about puffing with Bud Holmes. Did you ever worry about puffing with Wiley Fairchild?

Mr. **Weingarten**. I was skeptical of every witness I ever put on the stand in my prosecutorial career except, basically, Government agents. I accepted what they said with face value, but certainly I was skeptical about Wiley Fairchild's testimony. He was charged with perjury.

Mr. **Stewart**. OK. Now, when he went into the grand jury——

Mr. **Edwards**. Mr. Stewart, would you like to proceed for an additional ten minutes?

Mr. **Stewart**. Please, sir.

Mr. **Edwards**. So ordered.

Mr. **Stewart**. When Wiley Fairchild went before the grand jury after he cut the deal with you—you remember that occasion—he accused Bud Holmes of having murdered Bill Porter, didn't he?

Mr. **Weingarten**. I don't think it was that strong. I think he was talking about information that he had heard on the street. I don't think he made a direct accusation, and if he did, he certainly backed it up with zero evidence.

Mr. Stewart. OK, and then he also accused Judge Nixon of accepting a bride, a $10,000 bribe, in the Billy Shows case?

Mr. Weingarten. I think that's an unfair characterization. I think he was asked why did you think it would be fruitful to deal with Judge Nixon, and he reported that he had heard from a friend who had a son who was in trouble that money was paid to Bud Holmes that got to Judge Nixon.

Mr. Stewart. And that was a flat lie, wasn't it?

Mr. Weingarten. I don't know if he heard that information or not.

Mr. Stewart. OK, but whether the money went there was a flat lie?

Mr. Weingarten. He had no information—well, that's not a flat lie at all. I mean, that's what Wiley Fairchild claimed to have heard. Whether or not the information was false is another matter. Simply because the information is false doesn't make Wiley Fairchild a liar on that score.

Mr. Stewart. Judge Nixon never handled the Shows case, did he?

Mr. Weingarten. He did not, and the grand jury was so advised.

Mr. Stewart. When?

Mr. Weingarten. On several occasions.

Mr. Stewart. Were they advised when Mr. Fairchild was there?

Mr. Weingarten. No.

Mr. Stewart. You let that accusation just sit in the grand jury, didn't you, like a skunk in the jury box?

Mr. Weingarten. No, I don't think I let it sit. I think the grand jury was appropriately advised as to the true circumstances of the Shows case, and it was absolutely relevant evidence for the grand jury to understand why Wiley Fairchild thought he could deal with Judge Nixon.

Mr. Stewart. After the Nixon trial was over, did you get a phone call from John Baltar asking about a pardon for Wiley Fairchild?

Mr. Weingarten. I may have. I don't recall.

Mr. Stewart. Well, let's try to refresh your recollection by looking at the Baltar declaration again. It's exhibit N-25; I believe that's towards the end. The last paragraph—let me read it, paragraph 12, "After Judge Nixon's trial was concluded, Mr. Fairchild asked me to contact Mr. Weingarten to ask if Mr. Weingarten would assist in an application by Mr. Fairchild for a presidential pardon. I reached Mr. Weingarten by telephone at his office in Washington and made that request. Mr. Weingarten replied that he'd be willing to help Mr. Fairchild in any way he could, but would not do so until the Judge Nixon matter was completely concluded," close quote. Is that true?

Mr. Weingarten. No. I would not have had that conversation with Baltar. If I had a conversation with Baltar about a pardon, it would have been to repeat what I told you before.

Mr. Stewart. So he's lying about that?

Mr. **Weingarten**. I don't know if he's lying or not. I don't know why he put that down on paper. I only know what I would have said to him.

Mr. **Stewart**. What you would have said to him, or do you have a real recollection?

Mr. **Weingarten**. No, I have no specific recollection of the conversation with Baltar. I have plenty of recollection of my conversations with representatives of Fairchild on the pardon issue.

Mr. **Stewart**. OK. Pardon me.

I'm switching now to Drew Fairchild. Did you ever discuss Drew Fairchild's legal situation with Wiley Fairchild or Wiley's lawyers?

Mr. **Weingarten**. With Hess, who was also Drew's lawyer.

Mr. **Stewart**. OK, so Barry Hess served as Wiley's lawyer and also as Drew's lawyer?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK, and he reported to both, isn't that right?

Mr. **Weingarten**. I presume.

Mr. **Stewart**. You were dealing with him at the same time with respect to both clients?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. Simultaneously?

Mr. **Weingarten**. Well, I think Wiley Fairchild's case was over when events relating to the Drew Fairchild case heated up.

Mr. **Stewart**. But you said after you had a deal with him——

Mr. **Weingarten**. I mean, after the plea with Wiley, there may have been contact with Hess concerning Wiley. I'm not sure.

Mr. **Stewart**. He wasn't sentenced for another ten months, was he?

Mr. **Weingarten**. I don't recall. I mean, I'm not sure Hess was at sentencing.

Mr. **Stewart**. Do you recall that it was a partner of Hess' at sentencing?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. On how many occasions did you discuss Drew Fairchild's situation with Mr. Hess?

Mr. **Weingarten**. I don't know. I mean, I remember a call from Barry Hess saying that Drew Fairchild is being prosecuted in State court because he's cooperating with you in the Bud Holmes case. I mean, that's what I specifically recall.

Mr. **Stewart**. OK. I may have skipped over this without listening closely enough, and I apologize. Did you say that you had any conversations with Wiley Fairchild about his son's situation?

Mr. **Weingarten**. I may have. I don't recall.

Mr. **Stewart**. You don't recall any?

Mr. **Weingarten**. No.

Mr. **Stewart**. OK.

Mr. **Weingarten**. I mean, I could have.

Mr. **Stewart**. Sure. Let's look at exhibit N–24 and see if we can refresh your recollection. It's the declaration of Wiley Fairchild dated March 8, 1988. Paragraph two, it's a short one, "Mr. Weingarten also stated on several occasions in early 1985 that he would do what he could do to help my"—I'm sorry; I misread that—"that he would do what he could to help my son, Drew." Do you have that there?

Mr. WEINGARTEN. Yes.

Mr. STEWART. Is that true?

Mr. WEINGARTEN. I could easily have had conversations with Wiley about Drew. I don't have specific recollection about those occasions, and I know what I would have said to Hess and I know what I would have said to Wiley.

Mr. STEWART. OK. I'm asking what you did say, OK? Do you recall telling Wiley Fairchild that you would do what you could to help his son, Drew?

Mr. WEINGARTEN. No.

Mr. STEWART. OK.

Mr. WEINGARTEN. I don't recall that.

Mr. STEWART. Do you recall that you did not say it?

Mr. WEINGARTEN. No.

Mr. STEWART. Can you deny it?

Mr. WEINGARTEN. No.

Mr. STEWART. OK. It might have happened?

Mr. WEINGARTEN. My best recollection would have been that in conversations with Fairchild representatives, I would have said the following, that I will attempt to see to it that Drew Fairchild is not punished solely for assisting the United States. That's what they presented me.

Drew Fairchild was indicted by the United States. It was open-ended; there was no deal. A sentencing ensued. I would have made representations to Fairchild and/or Fairchild people that the United States was going to be fair to Drew Fairchild, period; no agreements, no representations, no promises, and the chips will fall where they may.

Mr. STEWART. Well, is being fair the same as that you were going to do what you could to help him?

Mr. WEINGARTEN. No, I don't believe it is.

Mr. STEWART. OK, but I thought you said you couldn't be sure you hadn't told him that you would do what you could.

Mr. WEINGARTEN. I can't remember exact conversations I would have had with anybody. We're talking about things that happened years ago and I had a lot of conversations with Fairchild and Fairchild people.

I would not have made that representation because I wasn't going to do anything I could to help Drew Fairchild. I was going to attempt to see to it that the case had a fair resolution.

Mr. STEWART. OK. We're back in the conditional voice "would." I'm asking "did," and I thought you——

Mr. WEINGARTEN. I've explained to you I don't have a specific recall of such conversations, but I know what I would have done.

Mr. STEWART. All right, and you're still saying—I want to make sure I haven't lost this here—you're still saying that that conversation might have happened; you might have told him that you'd do what you could to help Drew?

Mr. WEINGARTEN. No. My answer is I don't specifically recall the conversations that I had. To the best of my recollection, to the best of my understanding of my behavior in this case, I wouldn't have said that to Wiley Fairchild.

Mr. STEWART. You wouldn't have?

Mr. WEINGARTEN. No.

Mr. STEWART. OK, but you're not sure whether you did or not?

Mr. WEINGARTEN. I'm not sure of the specific conversations that I had.

Mr. STEWART. Now, Wiley wanted to save Drew's plea bargain, didn't he, the plea bargain that went back to Bud Holmes?

Mr. WEINGARTEN. You know, I'm not sure about that. I think Wiley wanted his son's—I mean, he may well have. I don't know Wiley's motivation. I mean, that's a hard one to answer. I think Wiley wanted his case finally and fairly handled.

Mr. STEWART. Do you think he wanted Drew to get a nice, long prison sentence?

Mr. WEINGARTEN. He was disgusted with Drew. He may have thought that—I don't know. I mean, you're asking me questions as to what Wiley wanted. That's very hard to answer.

Mr. STEWART. Did Wiley ever ask you to get Drew a nice, long prison sentence?

Mr. WEINGARTEN. No, he did not.

Mr. STEWART. He wanted to get good treatment for Wiley, didn't he—fair treatment, and even lenient treatment, didn't he?

Mr. WEINGARTEN. I don't know.

Mr. STEWART. I'm sorry; for Drew, excuse me.

Mr. WEINGARTEN. He was terribly—Hess was certainly concerned that Drew was going to get punished by the State for cooperating with me.

Mr. STEWART. OK. Now, you say he was concerned about Drew getting punished by the State. There was an event—you didn't mention this in the direct testimony—there was an event that triggered that concern, wasn't there?

Mr. WEINGARTEN. Yes.

Mr. STEWART. All right. Judge McKenzie announced that he was not going to respect that plea bargain that Bud Holmes had reached four years ago?

Mr. WEINGARTEN. Right.

Mr. STEWART. OK. So it didn't just come out of the blue that the Federal Government brought an indictment against Drew Fairchild?

Mr. WEINGARTEN. Absolutely not.

Mr. STEWART. You didn't just wake up some morning and say I'm going to go get Drew?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK. Judge McKenzie said I'm not going to honor this plea bargain; I'm going to sentence Drew Fairchild to five years in prison?

Mr. WEINGARTEN. That would have triggered the call from Hess.

Mr. STEWART. OK, but that's what happened, isn't it?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK, and then Barry Hess calls you up, doesn't he?

Mr. WEINGARTEN. Yes.

Mr. STEWART. And he's representing Drew in this call?

Mr. WEINGARTEN. Yes.

Mr. STEWART. Maybe Wiley; it's hard to know sometimes.

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK, and he says words to the effect Judge McKenzie is going to put Drew away for a long, long time, doesn't he?

Mr. Weingarten. No. I mean, what I recall is the specific statement that he believed that Drew was being punished for cooperating against Bud Holmes and what was I going to do about it.

Mr. Stewart. Did you think he was being punished for cooperating against Bud Holmes?

Mr. Weingarten. I couldn't tell. I mean, I was skeptical about it. I couldn't tell. I made an inquiry.

Mr. Stewart. Who did you ask?

Mr. Weingarten. Glenn White.

Mr. Stewart. And what did Glenn White say?

Mr. Weingarten. He said that Drew Fairchild's case was a hot potato. It's for political reasons that they can't accept the plea agreement, and there's nothing more to it. And he assured me—he was the prosecutor—that Drew was not going to be punished for cooperating with the Federal Government.

Mr. Stewart. OK. Now, Glenn White, just to be clear here, was Bud Holmes' successor as district attorney, correct?

Mr. Weingarten. Correct.

Mr. Stewart. All right. So if anybody is being unfair to Drew Fairchild, punishing him for cooperating with the Federal Government, it would have to be Glenn White, isn't that right?

Mr. Weingarten. He would have been the prosecutor.

Mr. Stewart. OK, and you called him up and he said don't worry, that's not what's happening, isn't that right?

Mr. Weingarten. Yes.

Mr. Stewart. OK. Did you believe Mr. White?

Mr. Weingarten. I thought White was not an honorable man.

Mr. Stewart. OK. So you didn't think he was punishing Drew Fairchild for cooperating with the Federal Government?

Mr. Weingarten. I had no reason to believe that Glenn White was lying to me.

Mr. Stewart. OK. Did you think Judge McKenzie was punishing Drew Fairchild for cooperating with the Federal Government?

Mr. Weingarten. I had no idea. I knew that McKenzie had gone out to Wiley Fairchild's office seven o'clock in the morning a year before in what was certainly a bizarre event. I didn't know what was motivating McKenzie. White had advised——

Mr. Stewart. Who took him out to the farm that night—that morning?

Mr. Weingarten. Holmes.

Mr. Stewart. Bud Holmes?

Mr. Weingarten. Yes.

Mr. Stewart. OK. It was not to the farm; I'm sorry. It was to Wiley Fairchild's office.

Mr. Weingarten. Wiley Fairchild's office, yes.

Mr. Stewart. Right, OK.

Mr. Weingarten. So I didn't know. I mean, White assured me that this was a hot potato politically. They didn't know what to do with it.

Mr. Stewart. OK, and Mr. Hess asked you to write a letter, didn't he, on behalf of Drew?

Mr. Weingarten. Did I write the letter to Glenn White?

Mr. Stewart. I believe so.

Mr. **Weingarten**. Glenn White may have requested the letter. I don't remember where the request came from.

Mr. **Stewart**. Didn't Mr. Hess want you to write a letter on behalf of Drew Fairchild?

Mr. **Weingarten**. He may have. I don't remember that.

Mr. **Stewart**. Didn't he want you to come and make an appearance on behalf of Drew Fairchild?

Mr. **Weingarten**. He may have. I didn't.

Mr. **Stewart**. You wrote the letter, though, didn't you?

Mr. **Weingarten**. I wrote a letter to Glenn White describing Drew Fairchild's cooperation.

Mr. **Stewart**. That's exhibit N–4. Would you take a look at that and—wait, that may be wrong. exhibit N–3; take a look and see if that's the letter. I don't have a signed copy; I apologize for that. It's N–3. I'm sorry.

Mr. **Weingarten**. OK.

Mr. **Stewart**. Is that the letter that you sent?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK, and that was three days before Drew tried to get the plea bargain affirmed by the court, isn't that right?

Mr. **Weingarten**. I don't remember the chronology. If you make that representation, I accept it.

Mr. **Stewart**. And on March 8th, the plea bargain was thrown out by Judge McKenzie, wasn't it?

Mr. **Weingarten**. I don't recall. If you make that representation, I accept it.

Mr. **Stewart**. Now, it's about three weeks after you wrote that letter that the indictment of Drew Fairchild comes down at the end of March 1985?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. Federal indictment; excuse me. OK. What prompted you to indict Drew Fairchild?

Mr. **Weingarten**. The situation, as I stated, with Hess' call caused us to go back to the drawing board and say what's the fair thing to do at this point, and a decision was made in Washington, DC., that we should present an indictment of Drew Fairchild. Glenn White was so advised and we did it.

Mr. **Stewart**. OK. Now, let's be clear about this. Mr. Hess asked you to indict his client, right?

Mr. **Weingarten**. I don't know if he said it in so many words. He may have made representations that he preferred the case to be handled federally.

Mr. **Stewart**. So you understood that he wanted you to indict his client?

Mr. **Weingarten**. He may have been looking for immunity. I don't know what he—my recollection is he wanted the case in Federal court. I don't know if he was specifically requesting that we indict the guy.

Mr. **Stewart**. And what was your understanding as to why he made that request, why he wanted it in Federal court?

Mr. **Weingarten**. Because he didn't think Drew was going to get fair treatment in State court.

Mr. **Stewart**. OK, and he——

Mr. WEINGARTEN. I mean, Drew Fairchild had been operating under an understanding from October or November 1980 that he had a deal for no time. Now, on the eve of an investigation involving Bud Holmes, he's advised that that plea agreement is no good and he's going to get hit with five years.

His lawyer approached the Justice Department and said this is unfair. Something terrible is happening; he's being punished for his cooperation. We took the matter back to Washington. We considered it and decided the appropriate thing to do would be to attempt to handle the Drew Fairchild case federally. That's what we did. The local prosecutor was so advised. The local prosecutor had no objection. The local prosecutor represented that he would continue to pursue the Drew Fairchild case locally, and he did so.

Mr. STEWART. OK. So I'm just going to try to cut through this and maybe short-circuit this some. Mr. Hess wanted a shorter sentence; that's why he wanted a Federal prosecution, correct?

Mr. WEINGARTEN. You'll have to ask Mr. Hess.

Mr. STEWART. Did you understand that's what he wanted?

Mr. WEINGARTEN. That's not an illogical conclusion.

Mr. STEWART. Did you understand that's what he wanted?

Mr. WEINGARTEN. I think he felt more comfortable with the case being handled in the Federal system. I think he was very skeptical about the bona fides of the local Mississippi system. He was not from Mississippi.

Mr. STEWART. The bottom line——

Mr. WEINGARTEN. Beyond that, you'd have to talk to Mr. Hess.

Mr. EDWARDS. Mr. Stewart, do you request another ten minutes?

Mr. STEWART. Thank you, sir.

Mr. SENSENBRENNER. Mr. Chairman, may I be recognized?

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Chairman, I would like to have Mr. Stewart recall the ground rules that were announced by the Chairman at the beginning of the committee. It says, "Furthermore, counsel is reminded that the scope of this inquiry is limited to whether Judge Nixon lied under oath and his fitness to remain on the bench, and questions and argument by counsel should focus on that issue."

I think for the last half hour, counsel, your questions have been straying far afield from the Chair's admonition, and I do not think this is the place to build a record for a habeas corpus hearing and I would hope that the Chair's admonition would be followed for the remainder of the questioning.

Mr. EDWARDS. You may proceed, Mr. Stewart.

Mr. STEWART. Thank you. I would say I really am trying to respect the procedural requirements. These are matters that were inquired into in the direct testimony and I think I have an obligation to pursue them.

Let me stop again and see if I remember where we are.

Mr. WEINGARTEN. I think it was about Drew's case and how it got to be in Federal court.

Mr. STEWART. OK. Mr. Hess wanted a shorter sentence. That's why he asked you to intervene, right?

Mr. **Weingarten**. It's very difficult to answer questions when you want me to presume what was in someone else's head. That's not an illogical conclusion.

Mr. **Stewart**. Is that what you understood?

Mr. **Weingarten**. I really thought that he had a general unhappiness with the way things were done in Mississippi and local court and he felt better that the feds handled the case.

Mr. **Stewart**. If he had thought he was still going to get the plea bargain, do you think he would have been more comfortable—plea bargain in State court with no time? Do you think he still would have been comfortable with State court?

Mr. **Weingarten**. I don't know; perhaps.

Mr. **Stewart**. The bottom line in criminal practice is time in jail, isn't it?

Mr. **Weingarten**. With some clients, for sure. With others——

Mr. **Stewart**. Sure. With Drew Fairchild, Drew Fairchild confessed, hadn't he? He had told the grand jury at this time everything about his involvement?

Mr. **Weingarten**. Well, the evidence against Fairchild was overwhelming from day one.

Mr. **Stewart**. OK. So for Drew Fairchild's lawyer, the only issue was time, how much time was he going to spend, isn't that right?

Mr. **Weingarten**. Sure.

Mr. **Stewart**. OK, and he wanted a Federal prosecution to get less time, didn't he?

Mr. **Weingarten**. That may have been his motivation.

Mr. **Stewart**. OK, and you gave him a Federal prosecution, right?

Mr. **Weingarten**. I didn't give him a Federal prosecution. I went back to Washington. The case was carefully discussed and an agreement was reached that the appropriate thing to do would be to handle the case federally.

Mr. **Stewart**. Did Mr. Hess ever talk with you about the possibility that the Federal indictment would preempt the State prosecution totally? The State prosecution would just be totally swept off, preempted totally.

Mr. **Weingarten**. I think he had that hope from conversations he may have had with local Mississippi officials.

Mr. **Stewart**. OK. So did he discuss with you a section in the Mississippi code that says if a violation of this article is a violation of Federal law, a conviction or acquittal under Federal law for the same act is a bar to prosecution in this State?

Mr. **Weingarten**. He may have, Mr. Stewart. I'm not sure. I mean, I don't know. He may have. I think he discussed that with Judge Parker at sentencing.

Mr. **Stewart**. OK, but you understood that one of the things he was after was to try to just shut down the State prosecution totally?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. And he was going to use you to do that?

Mr. **Weingarten**. He wasn't using me at all.

Mr. **Stewart**. Now, you were subpoenaed to serve as a witness for Drew Fairchild in that case, weren't you?

Mr. WEINGARTEN. You know, I saw that in your exhibit book. I don't remember that. I mean, I don't know what that was about.

Mr. STEWART. It's exhibit 1-N. Do you recall being served with that?

Mr. WEINGARTEN. Where is that?

Mr. STEWART. 1-M.

Mr. WEINGARTEN. I don't, but I'm sure it happened if there's a document to that effect.

Mr. STEWART. It's 1-M. The letters start there right at the beginning. I'm not sure—I mean, if you've seen it once, it did not refresh your recollection as to that event?

Mr. WEINGARTEN. I don't why I would have been subpoenaed or what it was for.

Mr. STEWART. You don't recall being served?

Mr. WEINGARTEN. I really don't. I mean, an FBI agent may have accepted service for me. I just don't remember.

Mr. STEWART. You don't recall discussing with Mr. Hess what you were going to—what he wanted you to testify to?

Mr. WEINGARTEN. I don't know. Where is—I don't see it. What is it?

Mr. STEWART. It's 1-M; it's in the front of the book, M as in Mary.

Mr. WEINGARTEN. Oh, I have the wrong book; I'm sorry. No, I don't have the wrong book. I have letters on—1-N?

Mr. STEWART. M, as in Mary—oh, no. It's N-1-M. Excuse me.

Mr. Chairman, I can assist the witness, if that's all right.

Mr. WEINGARTEN. Yes. Why don't you—where is it? OK. I really have no recollection of this subpoena.

Mr. STEWART. All right. Now, when you indicted Drew Fairchild, you knew he was going to plead guilty, didn't you?

Mr. WEINGARTEN. I believe so.

Mr. STEWART. OK. He pled guilty the same day, didn't he?

Mr. WEINGARTEN. Yes.

Mr. STEWART. OK, so you've got to make arrangements for a courtroom and all the rest?

Mr. WEINGARTEN. Yes, yes.

Mr. STEWART. OK. So Mr. Hess had told you he was going to plead guilty if you indicted him?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK, so you had that understanding?

Mr. WEINGARTEN. Correct.

Mr. STEWART. And you also understood that he wanted you to indict him to get a shorter prison term for Drew?

Mr. WEINGARTEN. For fairer treatment.

Mr. STEWART. And he defined fairer treatment as a shorter prison sentence?

Mr. WEINGARTEN. He didn't define it to me. I mean, we've gone over this over and over again.

Mr. STEWART. All right. How much of a prison term did you recommend?

Mr. WEINGARTEN. I made no specific recommendation in terms of time.

Mr. STEWART. Had you discussed that with Mr. Hess beforehand?

Mr. **Weingarten**. I'm certain I would have made representations that I was not going to make a recommendation either way.

Mr. **Stewart**. OK, and he got six——

Mr. **Weingarten**. Wait a minute. My recollection is I was free to say anything I wanted.

Mr. **Stewart**. Right. I'm asking did you discuss with Mr. Hess beforehand your intentions with respect to what you were going to say on sentencing.

Mr. **Weingarten**. I think I simply said I was going to try to be fair to Drew.

Mr. **Stewart**. OK, and he got six months?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. All right. I believe you mentioned that—I'm switching now off Drew Fairchild. I'm back at the beginning of the investigation just for a few questions. The grand jury that was first empaneled also included the Petit Bois investigation, is that right?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. OK. Now, why was the Public Integrity Section hearing that case—handling that case? Excuse me.

Mr. **Weingarten**. A decision had been made by the Department of Justice that it's appropriate for the Public Integrity Section to handle it.

Mr. **Stewart**. The Public Integrity Section only handles cases involving public officials, isn't that right?

Mr. **Weingarten**. Well, it handles many cases where public officials are not defendants. It handles frauds on the court where a lawyer is a defendant. There's got to be some connection to a public official in some fashion.

Mr. **Stewart**. All right. Was Judge Nixon a target of that Petit Bois Island investigation?

Mr. **Weingarten**. There came a time when he was a subject of the investigation. I don't believe you could ever say he was a target.

Mr. **Stewart**. Now, at the time this investigation began——

Mr. **Weingarten**. Let me—I'm defining target meaning that the Government at the time had evidence to indict and an intent to indict. The word "target" has many meanings to different people.

Mr. **Stewart**. All right. So you——

Mr. **Weingarten**. Certainly, Judge Nixon's conduct was under investigation by that grand jury in connection with Petit Bois.

Mr. **Stewart**. OK, and that's because—and the reason that case came to anyone's attention was because he had ruled against the Government, isn't that right?

Mr. **Weingarten**. That's certainly not correct.

Mr. **Stewart**. Well, that was the first step, wasn't it?

Mr. **Weingarten**. The first step of what, the investigation?

Mr. **Stewart**. The Government's interest.

Mr. **Weingarten**. Absolutely not. The first interest, as I understand it—and I was not the prosecutor—in the Petit Bois case was that a complainant in Florida alleged that two individuals, Stocks and Lewis, had committed fraud in connection with the Petit Bois Island purchase.

Mr. **Stewart**. Nobody was ever convicted out of the Petit Bois Island investigation, isn't that right?

Mr. **Weingarten**. True.

Mr. **Stewart**. OK. Mr. Stocks and Mr. Lewis were indicted and acquitted, isn't that right, just be clear?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. All right. Was there any discussion, or have you seen any mention in internal memoranda concerning why the Government was pursuing the Petit Bois Island case for any reasons other than the allegations against Stocks and Lewis?

Mr. **Weingarten**. That certainly was the beginning of the investigation. There were other reasons why the investigation proceeded.

Mr. **Stewart**. All right. Did you ever see any references to the Government's embarrassment over losing the case?

Mr. **Weingarten**. As a cause for the investigation to proceed?

Mr. **Stewart**. No, just did you see any references?

Mr. **Weingarten**. I think in your material.

Mr. **Stewart**. OK. You're referring to the exhibit we submitted from Congress?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. OK.

Mr. **Weingarten**. Where the Lands Division or the U.S. Attorney's office was criticized by the way it handled the Petit Bois case.

Mr. **Stewart**. All right, and that's the only time you've ever seen it mentioned?

Mr. **Weingarten**. The fact that the case may have been mishandled by the Justice Department was certainly something that was discussed inside the Public Integrity Section.

Mr. **Stewart**. OK.

Mr. **Weingarten**. But as far as that mishandling ever being a trigger for further investigation, I don't believe that happened.

Mr. **Stewart**. Did you ever investigate anybody at the Justice Department to figure out why they had mishandled the case?

Mr. **Weingarten**. There was never an allegation that anybody in the Justice Department criminally mishandled it.

Mr. **Stewart**. They just botched it?

Mr. **Weingarten**. I don't know if they botched it or not. I don't know the facts. But, certainly, simply a mishandling of a case by a prosecutor or a lawyer does not result in a criminal referral to the Public Integrity Section.

Mr. **Stewart**. Was there any connection between the investigation of the Fairchild investment that you conducted and the investigation of Petit Bois Island that Ralph Martin of the Public Integrity Section conducted?

Mr. **Weingarten**. There came to be a connection between the two.

Mr. **Stewart**. OK, and both investigations were presented to the same grand jury?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. OK. Now, did you have any involvement in the Petit Bois Island investigation?

Mr. **Weingarten**. Involvement in the sense that there would be grand jury time scheduled. I would go down to Mississippi. The grand jury would be shared between the two teams, the prosecutors and agents. I was generally familiar with what was going on. I had no official responsibility whatever. I never interviewed any witnesses. I never appeared in the grand jury in the Petit Bois case or anything like that.

Mr. **Stewart**. So you never questioned any witnesses concerning Petit Bois Island before the grand jury?

Mr. **Weingarten**. No.

Mr. **Stewart**. You're sure of that?

Mr. **Weingarten**. Refresh my recollection. It's possible that there would have been a custodian and Ralph Martin would have been ill or indisposed and I took evidence, but I don't have a—as we speak now, I don't have a recollection of that.

Mr. **Stewart**. Did you discuss the Petit Bois Island investigation with Mr. Martin?

Mr. **Weingarten**. The Public Integrity Section has 20, 25 lawyers. I mean, sure.

Mr. **Stewart**. You did?

Mr. **Weingarten**. Sure. There were formal discussions when McMullan came forward and made his allegations, and the formal discussions concerned the timing of the indictment against Judge Nixon.

McMullan, as you know, alleged that there was a $300,000 bribery conspiracy involving Judge Nixon and Bud Holmes and Stocks and Lewis. That was a critical event. There were discussions in the Public Integrity Section concerning that allegation. I was party of those discussions.

Mr. **Stewart**. And you never were able to—the Public Integrity Section never brought an indictment on those allegations?

Mr. **Weingarten**. It did not.

Mr. **Stewart**. All right. Let me ask you about exhibit N-17. Do you recognize exhibit N-17?

Mr. **Weingarten**. I do recognize it, yes.

Mr. **Stewart**. All right. The cover sheet was identified in the trial as a note from Skip Jarvis, the complaining witness, to an FBI agent named White-Spunner, Ken White-Spunner?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. OK. Did you see this note when it was received by Mr. White-Spunner?

Mr. **Weingarten**. I remember distinctly what happened. White-Spunner came to me. It was on the eve of trial and he said look what I found in the bottom of my drawer, and I looked it and I read it and turned it over to Mr. Fawer.

Mr. **Stewart**. And the statement at the end of that note there is, quote, "By the way, four down, Wiley, Drew, Royals, and Holmes. I'm eager to go after the big prize," end of quote.

Mr. **Weingarten**. That's what it says.

Mr. **Stewart**. OK, and Mr. Jarvis testified at trial that the big prize was Judge Nixon?

Mr. **Weingarten**. The world according to Skip Jarvis.

Mr. **Stewart**. Well, you say that in kind of a condescending way. Do you think Skip Jarvis has a funny view of the world?

Mr. **Weingarten**. I certainly never viewed Judge Walter Nixon as the big prize.

Mr. **Edwards**. Mr. Stewart, we do intend to continue this hearing tomorrow morning at 9:30, if all of you can make it. Would you prefer to continue with this witness for a short time, or for about how long? I am not trying to cut you off.

Mr. STEWART. I appreciate that, Mr. Chairman. I am not going to complete the witness soon. I am probably 15 or 20 minutes away, or maybe longer. I never know.

Mr. EDWARDS. Mr. Weingarten, can you come tomorrow morning at 9:30?

Mr. WEINGARTEN. Certainly, Mr. Chairman.

Mr. SENSENBRENNER. Mr. Chairman, I would like to point out that an hour ago Mr. Stewart said that he was about a quarter done, after going on for about 15 minutes. I fail to see the relevancy of the questions that you are making, Mr. Stewart, to Mr. Weingarten about the issue that this committee has under consideration, and that is whether Judge Nixon lied under oath and whether he is fit to stay on the bench.

Mr. STEWART. I am happy to respond. I think that the relevance is direct. I have asked a whole bunch of questions——

Mr. EDWARDS. I believe that what we will do is after you have completed your examination and questioning of this witness that we will have another round and we will let Mr. Sensenbrenner have his turn again. I want to recognize pretty soon Mr. Baron for a couple more questions, too.

I think that what we ought to do now is recess until tomorrow morning at 9:30, and we will pick up the questioning at that time.

Now, let us see, I have a note here about the members. I should remind the members that Mr. Stewart sent his exhibits directly to their offices. They may want to bring them tomorrow morning, so I suggest that the members bring the exhibits with them tomorrow morning.

This committee stands in recess until tomorrow morning at 9:30.

[Whereupon, at 5:30 p.m., the subcommittee was adjourned, to reconvene at 9:30 a.m., Friday, June 10, 1988.]

JUDGE WALTER L. NIXON, JR. IMPEACHMENT INQUIRY

FRIDAY, JUNE 10, 1988

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Conyers, Sensenbrenner, DeWine, and Dannemeyer.

Staff present: M. Elaine Mielke, general counsel; Alan Baron, special counsel; Catherine A. LeRoy, chief counsel; Peter Keith, assistant special counsel; Pamela Naughton, associate special counsel; D. Christopher Ohly, assistant special counsel; Alan M. Slobodin, associate counsel; Daniel M. Freeman, parliamentarian; and Kitty Urban, clerk.

Mr. Edwards. The subcommittee will come to order. When we recessed yesterday, Mr. Stewart was asking questions of Mr. Weingarten and you may proceed. You are still under oath, sir.

Mr. Stewart. Thank you, Mr. Chairman.

Mr. Weingarten, right when we broke, I was asking you a question or two about Exhibit N-17, a letter—or, I guess, it's a note from Skip Jarvis to FBI agent Whitespunner. I believe it was your testimony that you didn't recall seeing that until immediately before trial; is that right?

Mr. Weingarten. That's correct.

TESTIMONY OF REID H. WEINGARTEN

Mr. Weingarten. There is a statement in the letter which I read to you concerning where Mr. Jarvis says he's eager to go after the big prize and I wanted to ask you if you had ever heard that term "big prize" used in the investigation, until that moment?

Mr. Weingarten. Never.

Mr. Stewart. And you understood it when you saw that letter that Mr. Jarvis was referring to Judge Nixon as the big prize?

Mr. Weingarten. I presume that's what Mr. Jarvis was talking about.

Mr. Stewart. And that's what he testified to, wasn't it?

Mr. Weingarten. Correct.

Mr. Stewart. All right. And you never heard anyone else use that term?

Mr. WEINGARTEN. I have no recollection of that.

Mr. STEWART. OK. Did you ever hear anyone else use a term like that—big prize, brass ring—referring to Judge Nixon?

Mr. WEINGARTEN. I have no recollection of that

Mr. STEWART. OK. I want to ask a question or two about Mr. Phillips, who was the U.S. Attorney in Jackson.

Before he took that position, he was the District Attorney in Forest County, which includes Hattiesburg—County Attorney.

Mr. WEINGARTEN. County Attorney.

Mr. STEWART. So he and Bud Holmes knew each other from way back; isn't that right?

Mr. WEINGARTEN. Correct.

Mr. STEWART. So when Bud Holmes called him up in 1981 and asked for Drew Fairchild's case, it wasn't a question of calling some stranger?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK. They're both from Hattiesburg and they both knew each other.

Mr. WEINGARTEN. Correct.

Mr. STEWART. Now, I want to ask a couple of questions about the oil and gas transaction itself.

Now, there was nothing illegal about backdating those notes and the deeds, right?

Mr. WEINGARTEN. I don't think it violated a Federal statute, if that's what you mean.

Mr. STEWART. OK. It didn't violate a State statute either.

Mr. WEINGARTEN. I don't know that. I don't know of any.

Mr. STEWART. And several Government witnesses testified that it is routine in the oil and gas industry to back-date deeds to the point where the agreement was made?

Mr. WEINGARTEN. I think Ingram testified to that.

Mr. STEWART. You don't recall Wiley Fairchild testifying to that?

Mr. WEINGARTEN. He may have.

Mr. STEWART. How about Skip Jarvis testifying to that?

Mr. WEINGARTEN. I don't recall that. He may have.

Mr. STEWART. Maybe David Massey testified to that, too?

Mr. WEINGARTEN. I don't recall.

Mr. STEWART. Do you recall that Wiley also testified that he had, in the past, issued deeds with the grantee in blank? That that was not unusual for him?

Mr. WEINGARTEN. If you represent that's in the transcript, I'll accept that.

Mr. STEWART. Well, it's at 583 and 84.

Mr. WEINGARTEN. I accept that.

Mr. STEWART. Now, do you recall that when Mr. Fairchild—Mr. Wiley Fairchild—was being cross-examined, that he testified that he had never discussed Drew Fairchild's case with Judge Nixon—page 640?

Mr. WEINGARTEN. If you represent that's what's in the transcript, I accept it.

Mr. STEWART. Do you recall that he also testified in the gist of his testimony about his conversation with Judge Nixon on that day, whenever the day was, was that he had complained to Judge Nixon that Bud Holmes was blackmailing him?

Mr. Weingarten. I think it was broader than that, Mr. Stewart. I think he complained about how the case was being handled. I think he complained about how unfair it was that his son was being prosecuted and someone equally culpable was not being prosecuted.

Mr. Stewart. He made those points as well and he also was complaining about the blackmailing.

Mr. Weingarten. That people were extorting or blackmailing money from him because he was wealthy and he didn't deserve it; sure.

Mr. Stewart. All right. And he also testified that he did not ask Judge Nixon to do anything?

Mr. Weingarten. Well, I'm not sure that's exactly correct. I think his purpose for having Judge Nixon come was to have Judge Nixon go see Bud Holmes and I think he conveyed that in his testimony.

Mr. Stewart. OK. Mr. Weingarten, I really have to ask you to try to answer my question. My question was, didn't he testify that he did not ask Judge Nixon to do anything?

Mr. Weingarten. I think he testified that he didn't specifically ask Judge Nixon to do anything, but I think he testified that it was his understanding that Judge Nixon would seek to make a solution to this problem.

Mr. Stewart. All right. At page 640, line six, the question is, "And out of the blue, you're telling this man something about blackmail by two good friends of his, right? Answer: Yes." And then the question is, "And you even—you don't ask him to do a thing; am I correct? Answer: That's right." That was Mr. Wiley Fairchild's testimony.

Mr. Weingarten. I think even Judge Nixon in his testimony testified that he understood that Wiley Fairchild was asking him to take care of the problem. I don't think that was in dispute at trial.

Mr. Stewart. Isn't it also true that Mr. Wiley Fairchild denied, when he testified, that he had any intention to violate the law in connection with the investment with Judge Nixon?

Mr. Weingarten. I think Wiley Fairchild has been all over the lot on that. He may have said that at trial.

Mr. Stewart. He testified that——

Mr. Weingarten. He plead guilty in Federal Court of violating 18 United States Code 201.

Mr. Stewart. Have you seen his declaration as to why he plead guilty?

Mr. Weingarten. I believe you showed it to me yesterday.

Mr. Stewart. Let's take a look at that, if we can. It's in Judge Nixon's exhibits, Exhibit N-24, paragraph three. I quote Mr. Fairchild's sworn statement, "Although I did not believe I had committed a crime, and even though Judge Nixon's investment had nothing to do with Drew's case, I pleaded guilty because I was afraid of going to jail and because my lawyer told me that if I was convicted, they would put me in handcuffs and then take me straight to jail that instant."

Mr. Weingarten. Mr. Stewart, all I can tell you is that at all times, Wiley Fairchild was represented by three and four lawyers. He had counsel when he appeared in Federal Court and he plead guilty. He plead guilty pursuant to a colloquy from a Federal judge.

Mr. STEWART. And at trial, he also denied that he had had any intention to violate the law; isn't that right?

Mr. WEINGARTEN. I believe he did.

Mr. STEWART. And he also testified at trial that the investment—and I'm quoting here—". . . didn't have a damn thing to do with Drew Fairchild."

Mr. WEINGARTEN. And he testified otherwise in the Grand Jury.

Mr. STEWART. OK. I'm switching the subject here. Representative Conyers, yesterday, asked a question about whether there was anything wrong with passing the case to the files. I just wanted to follow up for a second on that. That was when Bud Holmes passed Drew Fairchild's case to the files in December of 1982.

That was a legally insignificant act; was it not?

Mr. WEINGARTEN. Correct.

Mr. STEWART. All right. And you told the jury——

Mr. WEINGARTEN. Well, legally insignificant—I mean, it had legal implications, but certainly the implications could have been rescinded, as they were.

Mr. STEWART. Right. Thirty-three days later the case came back?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK. And you told the jury at trial that it was a meaningless act.

Mr. WEINGARTEN. Legally meaningless.

Mr. STEWART. When did the phone call to Wiley Fairchild from Bud Holmes's farm occur? What date?

Mr. WEINGARTEN. I can't answer that with precision. I never represented that I could.

Mr. STEWART. OK. The record is completely unclear on that; isn't that right?

Mr. WEINGARTEN. I wouldn't say it's completely unclear. The Government argued at trial that it took place before the case was passed to files. The defense argued at trial that it took place after.

Mr. STEWART. OK.

Mr. WEINGARTEN. But the United States certainly represented, I believe, in opening statements, throughout the trial, and closing statements that it could not pin the phone call with precision.

Mr. STEWART. Now, Wiley Fairchild said that it happened when Bob Royals came and told them that Bob Porter had said that Drew's old man ought to get up off his money to help Drew?

Mr. WEINGARTEN. I believe he said that at one point.

Mr. STEWART. Yes.

Mr. WEINGARTEN. I believe he testified at trial that he couldn't remember exactly what precipitated his specific request to see Judge Nixon. That's my recollection. He certainly, at one point, pinned it to the contact to Royals and that certainly was weighing on his mind when he met with Judge Nixon.

Mr. STEWART. And the contact with Royals had to have happened in the Summer of 1981; isn't that right?

Mr. WEINGARTEN. I don't think that's correct.

Mr. STEWART. Isn't that what you represented in the Chambers conference that that's when it probably happened?

Mr. **Weingarten**. I don't recall that. I think there were several possibilities. I think the issue was when Royals visited his crony in prison. I think the prison records—and if you have them, you can refresh my recollection—reflected that Royals visited his crony on a number of occasions all the way into 1982.

Mr. **Stewart**. But when you look at when Wiley paid the money, he paid the money to Bob Porter in July of 1981 and then again in September. That's when he's getting pressured. That's when Bob Royals is delivering the message from Bob Porter, pay the money; isn't that right?

Mr. **Weingarten**. I'm not sure. I mean, I don't think Wiley was precise on whether or not there was a connection between that Royals' visit and the legal fee. I'm not sure about that.

Mr. **Stewart**. But there was a Royals visit then; wasn't there, in the Summer of 1981?

Mr. **Weingarten**. To the prison.

Mr. **Stewart**. Well, that's surely true, but also to Wiley Fairchild?

Mr. **Weingarten**. I'm sorry. I don't recall the specifics. I recall that there were a number of occasions when Royals visited the prisoner and that that's when we concluded that Royals would have followed up with a visit to Fairchild.

Mr. **Stewart**. OK. It's fair to say that Wiley gave a lot of different testimony on this subject?

Mr. **Weingarten**. Yes, that's true.

Mr. **Stewart**. OK.

Mr. **Weingarten**. He was not sure what would have triggered his specific concerns.

Mr. **Stewart**. OK. Now, he also dated the call, during his testimony, from the appearance of publicity about Drew Fairchild?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. OK. He was very strong about that, dragging the Fairchild name through the mud?

Mr. **Weingarten**. Doubtless, that was one of the things that he was concerned about.

Mr. **Stewart**. All right. And the major publicity that occurred was at the time the case was passed to the files in early 1983; isn't that right?

Mr. **Weingarten**. Well, I think what was uncovered was basically one newspaper article. I think what was really eating Holmes was not necessarily the publicity, but that people were gossiping around the courthouse, that he was fixing the Drew Fairchild case. I think there was publicity—certainly, there was that newspaper article, I think, that was an exhibit at trial, but I think that Glenn White testified that basically, any time the Fairchild case was called, there was coverage.

Mr. **Stewart**. Well, you refer to a newspaper article. You're talking about Exhibit 20? It's the subcommittee's exhibit; it's not in my book. Have you got that?

Mr. **Weingarten**. I'm sure it's here.

Mr. **Stewart**. OK. I just want to make sure that that's what you're referring to.

Mr. WEINGARTEN. Well, I don't remember the specific article. I know that there was a newspaper article at trial that was introduced, reflecting the passage of the case to files.

Mr. STEWART. OK. It's marked actually Defendant's Exhibit 6 and it's got a tag from the trial. Is that the same article?

Mr. WEINGARTEN. I presume so.

Mr. STEWART. Did you ever attempt to find other newspaper articles and evidence of publicity during this period to determine whether it could have been a different time?

Mr. WEINGARTEN. I don't recall. Certainly there was publicity that I may or may not have seen during the bust. Certainly there would have been publicity in the legal events.

Mr. STEWART. But the publicity during the bust wouldn't have referred to—you mean the airport arrest in August of 1980?

Mr. WEINGARTEN. Correct.

Mr. STEWART. That wouldn't have referred to Drew Fairchild?

Mr. WEINGARTEN. It would have been publicity, I may or may——

Mr. STEWART. Would you please answer my question. Would that have referred to Drew Fairchild?

Mr. WEINGARTEN. No, absolutely not.

Mr. STEWART. Thank you.

Mr. WEINGARTEN. Fairchild plead guilty in open court in January of 1982.

Mr. STEWART. January of 1982. Did you ever find any publicity connected to that?

Mr. WEINGARTEN. I don't recall.

Mr. STEWART. OK.

Mr. WEINGARTEN. I don't remember.

Mr. STEWART. If I was to represent to you that we looked for it and couldn't find it, would you have a problem with disputing that?

Mr. WEINGARTEN. I have no problems with your representations, Mr. Stewart. I'd be surprised though that that wouldn't have been covered.

Mr. STEWART. Now, Wiley did testify at trial—for awhile at trial—that this conversation with Judge Nixon had to happen in early 1983; isn't that right?

Mr. WEINGARTEN. Well, you're interpreting things. I think that he was subjected to extensive cross-examination. I think he got tired. I think when you zeroed in on what was going on in the cross-examination, he testified over and over again that he was certain that the case was passed to files after his meeting with Judge Nixon.

Mr. STEWART. I don't dispute that he gave two different answers, but for awhile, he said it was in January of 1981; didn't he? January of 1983, excuse me.

Mr. WEINGARTEN. I don't know. I don't recall his testimony exactly. I haven't looked at the transcripts since the trial—since writing the brief.

Mr. STEWART. You mean on the appeal?

Mr. WEINGARTEN. Yes.

Mr. STEWART. OK. You just misspoke there?

Mr. WEINGARTEN. Yes.

Mr. STEWART. I can't find the page this instant.

Mr. WEINGARTEN. Mr. Stewart, I concede immediately that Fawer, the cross-examiner certainly got Wiley Fairchild moving in that direction. I think Mr. Fairchild appreciated what was going on. He corrected the mis-impression.

Mr. STEWART. OK. And then Mr. Fairchild did correct—changed his testimony saying he'd made a mistake and that it really was before the case was passed to the files?

Mr. WEINGARTEN. I don't think it came out like that. I don't think he said, oh, I made a mistake. I think he realized the issue that Fawer was driving at and he corrected any mis-impression that may have been created by his prior testimony. That's my recollection. We're both characterizing testimony here.

Mr. STEWART. All right. Now, Bud Holmes testified about the date and I think you said, in your summary at the beginning of the hearing, that Mr. Holmes testified that he was not sure exactly when the conversation happened?

Mr. WEINGARTEN. Right.

Mr. STEWART. OK. But he thought it happened on May 14th of 1982?

Mr. WEINGARTEN. That was his best recollection.

Mr. STEWART. His best recollection. He based that on a calendar entry for May 13, 1982, out of an office record in his office?

Mr. WEINGARTEN. Correct.

Mr. STEWART. All right. And you knew it couldn't have been May 13th because Judge Nixon was in court all that day in Biloxi?

Mr. WEINGARTEN. I think he thought the meeting was May 14th. He thought that because of a wedding.

Mr. STEWART. OK. My question though was, it couldn't have been May 13th, the date in the calendar, in Bud Holmes' calendar because Judge Nixon wasn't in Hattiesburg on May 13th? We know that.

Mr. WEINGARTEN. I don't think anybody thought it was May 13th.

Mr. STEWART. Correct. But the document itself says May 13th and that can't be right?

Mr. WEINGARTEN. Right.

Mr. STEWART. Now, the document itself also shows Ingram at 4:00; Judge Nixon at 4:15; correct?

Mr. WEINGARTEN. I don't recall. You don't have to show it to me. If you represent that, I accept it.

Mr. STEWART. Well, Exhibit 13——

Mr. WEINGARTEN. Your's or the committee's?

Mr. STEWART. The committee's exhibit, excuse me. Oh, boy, I gave you the wrong number. Sorry.

Mr. WEINGARTEN. If you represent——

Mr. STEWART. Exhibit 12. It's Bud Holmes' calendar or an office calendar, as I understand it, shows two separate entries.

Mr. WEINGARTEN. Correct.

Mr. STEWART. And Mr. Ingram said that he was never at Bud Holmes' office with Judge Nixon; isn't that right?

Mr. WEINGARTEN. I don't recall that. If you say that's what he said, I'll accept it.

Mr. STEWART. It's in the transcript at 1152.

Mr. WEINGARTEN. OK.

Mr. STEWART. And Judge Nixon said that he was not there with Carroll Ingram either.

Mr. WEINGARTEN. Well, it's clear that Judge Nixon wasn't there on May 13th. That entry is correct.

Mr. STEWART. OK.

Mr. WEINGARTEN. That was never in dispute.

Mr. STEWART. All right. Now, you represented that you were never certain that the conversation occurred on that date, on May 14, 1982?

Mr. WEINGARTEN. That's true.

Mr. STEWART. OK. And you've even stated, as I understand it, that you thought it might have been in October?

Mr. WEINGARTEN. I perhaps said—I don't remember my exact words—that if I were betting, I think it would be more likely to have been in October. There was a lot of circumstantial evidence that suggested that it would have been in October.

Mr. STEWART. OK. So you thought it probably was not in May, but you couldn't be sure because the testimony was all over the lot?

Mr. WEINGARTEN. It wasn't all over the lot, but it was certainly not clearly in one place.

Mr. STEWART. Now, before the trial started, you knew the Bud Holmes was going to say that he believed that the meeting was on May 14th?

Mr. WEINGARTEN. Correct.

Mr. STEWART. And it was material to the prosecution, was it not, that the phone call occurred before Drew's case was passed to the files?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK. During your investigation, you subpoenaed Judge Nixon's medical and dental records from Dr. Bennett York in Hattiesburg; isn't that right?

Mr. WEINGARTEN. Correct.

Mr. STEWART. And under Rule 16 of the Federal Rules of Criminal Procedure, you're supposed to turn over all records, which were properly requested as they were, that are material to the defense; isn't that correct?

Mr. WEINGARTEN. That's what Rule 16 says.

Mr. STEWART. All right. And you knew that Bud Holmes was going to date that meeting on May 14, to the best of his recollection, and you did not produce those dental records to the defense under Rule 16, did you?

Mr. WEINGARTEN. Did not turn them over.

Mr. STEWART. OK. You gave them Bud Holmes' calendar, didn't you?

Mr. WEINGARTEN. Correct.

Mr. STEWART. You thought that was material, right?

Mr. WEINGARTEN. Because it helped him date the meeting?

Mr. WEINGARTEN. Correct.

Mr. STEWART. But you didn't give them Judge Nixon's dental records?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK. They were material, weren't they?

Mr. **WEINGARTEN**. Well, whether or not they were material or not, the Court has ruled that they were not material, that there was no violation of Rule 16. I mean, that was a legal conclusion that the Court reached.

Mr. **STEWART**. Didn't the Court rule that there simply had been no prejudice, not that there had been no violation?

Mr. **WEINGARTEN**. Well, the Court ruled more than that. They said if anybody was prejudiced by the lack of use of the dental records, it was the Government.

Mr. **STEWART**. Fine, but they didn't—the Court did not rule that it was not a violation of Rule 16?

Mr. **WEINGARTEN**. I don't remember the Court's exact words. This issue was raised before the Court and the motion by the defense was denied.

Mr. **STEWART**. OK. And what was your explanation for why you hadn't produced those dental records at that time?

Mr. **WEINGARTEN**. The dental records were subpoenaed in connection with a separate allegation. The allegation was that Judge Nixon and his family had received free dental treatment from a Hattiesburg dentist.

Mr. **STEWART**. And that was never a basis for bringing any charges on the basis of those allegations?

Mr. **WEINGARTEN**. Well, the matter was investigated and the decision was not to prosecute Judge Nixon for a gratuity in connection with those dental records. In addition, the Judge ruled against us using 404(b) material. As a result of that, the file was put aside. There was no anticipated use of that file. There were many files like that in this investigation.

We did not, frankly, anticipate that Judge Nixon was going to challenge his appearance in Hattiesburg on May 14th. As a matter of fact, in anticipating trial, that did not appear to us to be a very big issue, primarily because the Government's conclusion was that we were not certain that this event took place on May 14th.

Frankly, we were quite surprised when Judge Nixon's defense included an adamant denial of being in Hattiesburg on May 14th. We did not connect the dental records to this issue in the middle of trial.

Mr. **STEWART**. OK. Now, he testified at trial that—Judge Nixon did—that he had been in Biloxi on the morning of May 14; correct?

Mr. **WEINGARTEN**. Correct.

Mr. **STEWART**. And that was true? There were court records showing that.

Mr. **WEINGARTEN**. As far as I know, yes.

Mr. **STEWART**. And he also testified that he was sure he had stayed there all day in Biloxi?

Mr. **WEINGARTEN**. He was very adamant that he was not in Hattiesburg on May 14th.

Mr. **STEWART**. And if you had those dental records showing him, in all likelihood, in Hattiesburg on the afternoon of May 14th?

Mr. **WEINGARTEN**. I'm sorry?

Mr. **STEWART**. You had those dental records in your possession at that time?

Mr. **WEINGARTEN**. A constructive possession.

Mr. **STEWART**. OK. And his records showed him in Biloxi though?

Mr. Weingarten. His court records showed him in Biloxi in the morning. I don't think they showed him in Biloxi in the afternoon. I think that was Judge Nixon's testimony.

Mr. Stewart. Right. And you never confronted him with the dental records?

Mr. Weingarten. Did not.

Mr. Stewart. I want to ask about Count 1 in the indictment. It's the gratuity. Excuse me one second.

[Pause.]

Mr. Edwards. Mr. Stewart, do you desire to proceed for another ten minutes?

Mr. Stewart. Thank you, Mr. Chairman, yes.

Mr. Edwards. Without objection, it is so ordered.

Mr. Stewart. Thank you.

OK, I want to ask about Count 1 now.

Mr. Weingarten. Yes, sir.

Mr. Stewart. To show a gratuity—and we covered this yesterday so I don't want to flog it too hard—you had to prove an official act was paid for or the expectation of an official act was connected to the payment of the gratuity?

Mr. Weingarten. Well, I don't want to engage in a legal fight. I think the Fifth Circuit law was, you need to have a transfer of some property in the anticipation of or whatever.

Mr. Stewart. We're in general agreement?

Mr. Weingarten. Sure.

Mr. Stewart. OK. But you never did approve any specific official act?

Mr. Weingarten. Certainly did not.

Mr. Stewart. OK. And the official act to create a violation of Count 1 could not have been Bud Holmes passing Drew Fairchild's case to the file because that did not involve any Federal action so it couldn't have been a violation of the gratuity statute by Judge Nixon?

Mr. Weingarten. Correct. It could have been evidence supportive of something else, but that in and of itself would not have constituted an official act.

Mr. Stewart. OK. And that was the Judge's instruction to the jury?

Mr. Weingarten. Correct.

Mr. Stewart. And I found no objection by you to that instruction?

Mr. Weingarten. I didn't fight that.

Mr. Stewart. OK. I want to go over some of the high points on Count 1 just quickly. We covered it yesterday that Mr. Wiley Fairchild made a large profit on the sale of the interest to Judge Nixon. He bought them for $200 to $300 each and sold them for $9,500; is that correct?

Mr. Weingarten. That was the testimony at trial.

Mr. Stewart. All right. Do you recall Exhibit N-14, if you'll take a look at it. I believe it was also a trial exhibit. It was an estimate of Mr. Fairchild's profit?

Mr. Weingarten. I don't see that, Mr. Stewart.

Mr. Stewart. N-14. Are you in our book or their book?

Mr. Weingarten. Your book. I see it.

Mr. **Stewart**. Do you recall that as a trial exhibit?

Mr. **Weingarten**. Vaguely.

Mr. **Stewart**. All right. And it shows an estimated profit for Mr. Wiley Fairchild to be between 1300 percent and 8300 percent on the mineral interests he transferred to Judge Nixon?

Mr. **Weingarten**. Well, that's reflective of the numbers you just gave me before.

Mr. **Stewart**. OK. And Wiley testified that there was nothing wrong—I'm sorry. I don't even want to get into his testimony.

When Skip Jarvis was wired up by the Government and sent to talk to Wiley Fairchild, I think this is April of 1984, Wiley said that there was nothing wrong with that investment and had nothing to do with Drew; didn't he?

Mr. **Weingarten**. Well, he said a lot of things at that meeting.

Mr. **Stewart**. OK. I'm asking about this. Isn't that what he said?

Mr. **Weingarten**. He said words to that effect, I'm sure.

Mr. **Stewart**. OK. And he testified to that at trial, too?

Mr. **Weingarten**. To what?

Mr. **Stewart**. There was nothing wrong with the investment and it had nothing to do with Drew. I just read that to you.

Mr. **Weingarten**. Well, he said a lot of things about the investment. He may have said that. He also said that he didn't want to make it look like a 100 percent gift. He also said on the tape that he did it because the man was a judge and a judge is a person who can do you favors. I mean, he said a lot of things about the transaction.

Mr. **Stewart**. Do you find his testimony unreliable? That's the message I'm getting here.

Mr. **Weingarten**. No. I find the man had a view of this thing that may not have comported with the view of the United States. Perhaps the best way to say it is, I think when Wiley Fairchild entered in the transaction, he thought it was perfectly OK to lay a gift on a United States District Court judge. In his world view, that was fine. The United States came in and said that's not fine, particularly when you're doing it in anticipation of official favors and we prosecuted him for it.

Mr. **Stewart**. Right. And you never proved any official favor that he got?

Mr. **Weingarten**. We certainly proved that he anticipated a favor—from his own mouth.

Mr. **Stewart**. You never proved any specific favor that he anticipated or received?

Mr. **Weingarten**. Well, I'm not sure about that. A, he plead guilty to the offense and B, from his own mouth, he instructed Jarvis to attempt to get Federal litigation in Judge Nixon's court. I think a reasonable person could infer and in Wiley Fairchild's mind was, hey, a sweet deal for the judge and I'd like to get my litigation in his court.

Mr. **Stewart**. It wasn't done, was it?

Mr. **Weingarten**. Was not.

Mr. **Stewart**. All right. Carroll Ingram testified there was nothing wrong with the investment?

Mr. Weingarten. Generally speaking, that's—well, he testified to that and he also testified to a lot of other things. He testified that it made him very uncomfortable——

Mr. Stewart. OK. I asked that question.

Mr. Weingarten. OK. Yes, sir.

Mr. Stewart. All right. Skip Jarvis, the anonymous informant who was pursuing Judge Nixon as the big prize—he had no knowledge, as I understand your testimony, that there was anything wrong with the investment? Just a lot of suspicions and cloak and dagger stuff.

Mr. Weingarten. Well, he certainly had no knowledge that Judge Nixon did a blessed thing wrong in the Drew Fairchild case. He had information, direct information, as to the circumstances of the transaction. The United States proceeded with an indictment charging Judge Nixon with violating the gratuity statute.

Mr. Stewart. Right. And you lost that and Skip Jarvis had no information that you could present at trial that supported your charge?

Mr. Weingarten. I wouldn't say that. I think Skip Jarvis testified as he testified. I think in some respects, Skip Jarvis supported the allegation.

Mr. Stewart. Didn't you tell the jury that Skip Jarvis had no information that Judge Nixon had violated any statute?

Mr. Weingarten. I think I said, Skip Jarvis has no direct evidence inculpating Judge Nixon. He had circumstantial evidence relating to the transaction.

Mr. Stewart. Fine.

Mr. Weingarten. And I think there is a difference between the two, Mr. Stewart.

Mr. Stewart. All right. Now, Judge Nixon said there was nothing wrong with the investment, right?

Mr. Weingarten. He certainly said that.

Mr. Stewart. You were the only person in the courtroom who said there was anything wrong with that investment.

Mr. Weingarten. Mr. Stewart, I was the representative of the United States at trial. I presented the case.

Mr. Stewart. And you had no witnesses who said there was anything wrong with that investment.

Mr. Weingarten. There was plenty of circumstantial evidence to support the charge. I got past the Rule 29 on the charge and argued the case to the jury. I was representing the United States and I did my job.

Mr. Stewart. During the trial, didn't you tell reporters that you did not expect Count 1, the gratuity count, to stick?

Mr. Weingarten. No. The situation in Hattiesburg—it was a tiny courthouse. We basically live with these people. There were off the record discussions, informal discussions with reporters. I certainly was disappointed with some of the evidence from the Government's witnesses in connection with Count 1 and I may have and I probably did articulate that disappointment to the reporters.

Mr. Edwards. Mr. Stewart, Mr. Weingarten, the subcommittee will recess for ten minutes for a vote in the House of Representatives.

[Recess.]

Mr. **Edwards**. The subcommittee will come to order. Mr. Stewart, you may proceed.

Mr. **Stewart**. Thank you, Mr. Chairman.

Mr. Weingarten?

Mr. **Weingarten**. Yes, sir.

Mr. **Stewart**. When we broke, I was asking you about your comments to reporters during the trial to the effect that the gratuity count, Count 1, you didn't expect to stick. Now, did you make that statement?

Mr. **Weingarten**. I don't believe those were the words I used.

Mr. **Stewart**. Did you use words to that effect?

Mr. **Weingarten**. My only recollection is, I expressed dissatisfaction or unhappiness with the way the evidence was coming in, vis-a-vis, the mineral royalty interests.

Mr. **Stewart**. Did you see a story in the *National Law Journal* where that statement was attributed to you just this Spring?

Mr. **Weingarten**. I saw the story. I briefly read it. I don't remember the exact words.

Mr. **Stewart**. You don't remember that statement?

Mr. **Weingarten**. I don't remember reading that statement in the story. If you represent to me that that statement is in the story, I'll accept it.

Mr. **Stewart**. I have it verbatim here. It was written by Mr. Fred Strasser, who is in the room here.

Mr. **Weingarten**. I wouldn't know Mr. Strasser.

Mr. **Stewart**. He was in Hattiesburg then, wasn't he?

Mr. **Weingarten**. Yes.

Mr. **Stewart**. And you talked to him during breaks and at the end of the trial?

Mr. **Weingarten**. Him and other reporters.

Mr. **Stewart**. OK. Mr. Brennan also?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. He was a Mississippi reporter?

Mr. **Weingarten**. Correct.

Mr. **Stewart**. Do you recall now, having seen Mr. Strasser, does that help refresh your recollection?

Mr. **Weingarten**. No. My recollection is exactly the same. As Wiley Fairchild would testify, as Carroll Ingram would testify, the lawyers would discuss, informally amongst themselves and with reporters, their view of the evidence. That just went on in this trial. There's a sequestered jury, there was no fear that the jury would be infected with press reports and that's my recollection.

Mr. **Stewart**. And you don't recall that you told these reporters you didn't expect Count 1 to stick?

Mr. **Weingarten**. I don't remember using those words. I mean, there's no doubt that I wasn't happy with the way the evidence was going in and I'm certain I expressed it, but sitting here today, I don't remember what words I used.

Mr. **Stewart**. OK. Do you recall telling them that you needed to keep Count 1 in the case as a backdrop for all the other counts?

Mr. **Weingarten**. I don't remember using those words. Certainly, I wanted to keep Count 1 in the case.

Mr. **Stewart**. As a backdrop for all the other counts?

Mr. WEINGARTEN. I don't know about the word "backdrop." It was the framework of the case.

Mr. STEWART. The other counts looked trivial without Count 1; isn't that right?

Mr. WEINGARTEN. No, no. A Federal judge lying under oath is not trivial and it wouldn't look trivial. I certainly wanted to keep Count 1 in the indictment.

Mr. STEWART. It's a lot tougher case to try without Count 1, isn't it, as a prosecutor?

Mr. WEINGARTEN. Not particularly. I think the evidence would be exactly the same. I don't know of any evidence that I could not have elicited without Count 1, but I'm not disagreeing with you. I did not want to lose Count 1.

Mr. STEWART. All right. Let's look at Exhibit N-22, if you would. It's in our book. It's a newspaper report dated February 7, 1987, in the *Jackson Clarion-Ledger* or *Daily News* and there's a—it's written by Mr. Jerry Mitchell. Do you recall ever meeting Mr. Mitchell?

Mr. WEINGARTEN. There were reporters at the—is this the University of Mississippi Law School?

Mr. STEWART. Yes, it is.

Mr. WEINGARTEN. There were reporters at the Law School while I spoke.

Mr. STEWART. OK. And you gave a speech or presentation to a class at the University of Mississippi Law School?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK. And you discussed the Nixon case at that class?

Mr. WEINGARTEN. In part.

Mr. STEWART. OK. And there are some statements here I want to ask you if you made. It says here, in the fourth column at the top, "Weingarten said the way Holmes—Bud Holmes—manipulated the younger Fairchild's case was almost breathtaking." Is that accurate?

Mr. WEINGARTEN. Correct.

Mr. STEWART. OK. And that was your genuine view?

Mr. WEINGARTEN. Absolutely.

Mr. STEWART. All right. Then it says, "Holmes testified that he indicted the younger Fairchild in order to help his friend, Bob Porter collect legal fees. Weingarten said,"—and the quote here is—"that chilled my blood." Is that accurate?

Mr. WEINGARTEN. And that's exactly the subject we discussed yesterday.

Mr. STEWART. Is that accurate—it chilled your blood to find out what Bud Holmes had done?

Mr. WEINGARTEN. When I heard that there was a chance that a prosecutor indicted a case so that a defense attorney could get paid his fee, yes.

Mr. STEWART. OK. Then there's the statement towards the bottom of that column—and I'm quoting the whole thing here now—"Looking back on the trial, Weingarten said he found no quarrel with the jury for acquitting Nixon on charges of accepting an illegal gift because the case was not proven." Is that what you said?

Mr. WEINGARTEN. I don't remember exactly what I said. My belief is that the jury's verdict was rationale. I was not surprised at anything that the jury did.

Mr. STEWART. Well, did you say, on this occasion at the University of Mississippi Law School, that you did not prove the case on Count 1?

Mr. WEINGARTEN. Am I quoted there?

Mr. STEWART. It's not in quotes, but it is attributed to you.

Mr. WEINGARTEN. I don't recall my exact words, Mr. Stewart. I know exactly what my feelings are. They would have been my same feelings when I spoke before the University of Mississippi.

Mr. STEWART. Is this statement accurate about your feelings as you sit here today?

Mr. WEINGARTEN. My feelings are that I have no quarrel with the jury's verdict. I was not surprised that they acquitted Judge Nixon of Count 1.

Mr. STEWART. Because the illegal gift was not proven?

Mr. WEINGARTEN. No. I think we had a technically sufficient case. We certainly had a case to get to the jury. We certainly had a case to argue. I was disappointed the way the evidence came in. I was not surprised that the jury acquitted.

Mr. STEWART. Were you surprised by the evidence?

Mr. WEINGARTEN. Some of it, yes. When you juxtaposed what certain of the witnesses had said before, particularly in the Grand Jury, with the way they testified at trial—when I said I was disappointed with the way some of the evidence went in, if you juxtaposed what some of the witnesses said on prior occasions with the way they testified at trial, I think that would make it clear.

Mr. STEWART. You didn't argue to the jury though that your witnesses were lying, they shouldn't be believed?

Mr. WEINGARTEN. No. I had a decision to make. I had to decide whether or not to attempt to impeach my own witnesses.

Mr. STEWART. And you never did that.

Mr. WEINGARTEN. That's rarely a wise thing for a lawyer to do and I chose not to do it. I was generally satisfied they were attempting to testify truthfully and I was generally satisfied with the way the evidence went in. I was specifically disappointed on certain points.

Mr. STEWART. Now, you testified—and it may be similar to what you testified to here—that you bad-mouthed the evidence as it was going in. I just want to make sure what that phrase "bad-mouthed" means.

Mr. WEINGARTEN. Just what I'm saying here, that I was disappointed.

Mr. STEWART. I want to revisit, for a moment, some of the advantages you get from Count 1. It does allow you to talk about, to the jury, by keeping it in, about supposed corrupt motives for the Judge; doesn't it? It shows money going into his pocket—nasty stuff.

Mr. WEINGARTEN. Well, Mr. Stewart, if the Government's theory was that a motive for Judge Nixon to lie in the Grand Jury was to obscure his relationship with Wiley Fairchild, I believe Federal judges would allow evidence as to that relationship. I think that's what the Court ruled, by the way.

Mr. STEWART. Count 1 gives you a lot more push to that argument, doesn't it?

Mr. WEINGARTEN. Well, again, I think—and Judge Meredith ruled in post-trial motions that virtually every piece of evidence that was admissible with Count 1 would have been admissable without Count 1. I haven't read the post-trial opinion in awhile.

Mr. STEWART. I'm sorry. What do you think he ruled?

Mr. WEINGARTEN. This argument has been made over and over again, before Judge Meredith, before the Court of Appeals, that Count 1 was improperly included. There's some law somewhere that all the evidence that was introduced at trial would have been admissible without Count 1.

Mr. STEWART. And you just don't remember where?

Mr. WEINGARTEN. I don't. I have not reviewed the Court opinions in a long time. And I believe that to be true, by the way. I certainly believe that I would have been able to introduce evidence of the oil transaction with or without Count 1.

Mr. STEWART. Keeping Count 1 in, you increased your chances of getting a compromise verdict with some convictions, too, didn't you?

Mr. WEINGARTEN. I believe that an illegal gratuity had been paid and received. I believed in the Count.

Mr. STEWART. But you told the University of Mississippi you hadn't proved it?

Mr. WEINGARTEN. No, I don't think that that's what I said. I think I said what I testified to before.

Mr. STEWART. OK. So the reporter got it wrong?

Mr. WEINGARTEN. I don't remember my exact words.

Mr. STEWART. Well, whatever they were——

Mr. WEINGARTEN. I know what I believe and I believed it then and I believed it during trial.

Mr. STEWART. OK. Let me just do a little wrap up. Wiley Fairchild was indicted. You made it clear to him that he could get a deal if he had something on Judge Nixon; correct?

Mr. WEINGARTEN. No. I really don't think that's fair, Mr. Stewart. I really think what's fair is that he was indicted and his lawyers approached the Government and they wanted to plea bargain. They made the proffer. Pursuant to the proffer, we made a plea bargain with Wiley Fairchild.

Mr. STEWART. OK.

Mr. WEINGARTEN. I believe that's a fair way of stating what happened with Wiley Fairchild.

Mr. STEWART. Great. Now, his deal included a recommendation of no jail time from you?

Mr. WEINGARTEN. Which I thought was appropriate.

Mr. STEWART. OK. And then he said at trial that he had committed no crime.

Mr. WEINGARTEN. He said a lot of things at trial, Mr. Stewart.

Mr. STEWART. Do you not believe Wiley Fairchild?

Mr. WEINGARTEN. I believe Wiley Fairchild——

Mr. STEWART. There's a message here. I'm troubled that you had a witness that you didn't believe.

Mr. WEINGARTEN. Don't be troubled. I firmly believe Wiley Fairchild did his level best to testify to the truth at trial. I firmly believe that.

Mr. STEWART. Are you saying he doesn't know the difference between truth and falsehood?

Mr. WEINGARTEN. No.

Mr. STEWART. That's a dangerous witness.

Mr. WEINGARTEN. No. I don't think that's fair, Mr. Stewart. I think that Wiley Fairchild, when he entered into the transaction with Judge Nixon, may not have thought he was committing a Federal offense. I did my level best, in my conversations with Wiley Fairchild, to explain to him what the United States was doing and I was satisfied, prior to him testifying, that he understood and that he knew that his obligation was to tell the truth and I am satisfied that he did his best at trial.

Mr. STEWART. OK. Now, we've talked about the two men who got indicted in the Petit Bois case—John Stocks and Eugene Lewis. They were both told, were they not, that if they had information Judge Nixon, they wouldn't have to be indicted; isn't that right?

Mr. WEINGARTEN. I'm the wrong person to ask that. I never met Stocks; I never met Lewis; and I really don't know what conversations they had with the Government.

Mr. STEWART. You don't know that those offers were made?

Mr. WEINGARTEN. No.

Mr. STEWART. So, if Exhibits N-35, N-36, N-37, and N-38 reflect that those offers were made, that they didn't have to be indicted if they could come forward with evidence on Judge Nixon, you just don't know the first thing about that?

Mr. WEINGARTEN. No, that's not fair. I knew that there was an allegation that there was a $300,000 bribery conspiracy and I knew that the United States wanted to get to the bottom of it.

Mr. STEWART. And they wanted to squeeze Stocks and Lewis to get it, right?

Mr. WEINGARTEN. I don't think that's fair because I don't know. I don't know what they did with Stocks and Lewis. I would be shocked if the United States did not make a vigorous effort to get at the truth in the Petit Bois investigation. I was not the person doing it.

Mr. STEWART. OK. And they never came up with charges like that, did they?

Mr. WEINGARTEN. There were no charges on the $300,000 bribery conspiracy.

Mr. STEWART. OK. Now, you also indicted Bud Holmes on four counts of perjury and one count of obstruction of justice; correct?

Mr. WEINGARTEN. I presented an indictment. The Grand Jury indicted.

Mr. STEWART. I stand corrected. You offered not to indict him if he could provide incriminating information on Judge Nixon?

Mr. WEINGARTEN. No, I don't think that's fair at all. There was an occasion prior to the return of the indictment where there was a meeting with Bud Holmes' lawyers. At that occasion, we gave Bud Holmes, through his lawyers, an opportunity to make a proffer.

Mr. STEWART. OK. Could you look at Exhibit N-27?

Mr. EDWARDS. Mr. Stewart, do you request another ten minutes?

Mr. STEWART. Yes, and I think it will be my last, Mr. Chairman.

Mr. EDWARDS. Without objection, it is so ordered.

Mr. STEWART. It's a declaration of Maurice Dantin, a lawyer in Columbia, Mississippi. Do you know Mr. Dantin?

Mr. WEINGARTEN. I've met him.

Mr. STEWART. And he was Bud Holmes' lawyer at this time, was he not?

Mr. WEINGARTEN. He was one of them. I don't think he was the primary lawyer.

Mr. STEWART. Do you recall meeting with him while he was serving as Bud Holmes' counsel?

Mr. WEINGARTEN. Yes.

Mr. STEWART. All right. The statement in paragraph two is, "On March 27, 1985, I attended a meeting with my client and Federal Prosecutor Reid Weingarten." Do you recall that? This is two days before the indictment.

Mr. WEINGARTEN. Generally, yes.

Mr. STEWART. All right. "Weingarten informed us, at that meeting, that Holmes was scheduled for indictment by a Federal Grand Jury in Hattiesburg that week." Do you recall giving them that news?

Mr. WEINGARTEN. I certainly would have.

Mr. STEWART. OK. But you don't recall it?

Mr. WEINGARTEN. Well, Mr. Stewart, I had a million meetings in connection with this case. When I'm sitting here now, I have difficulty referring back to a specific meeting. I know what I would have done and I know generally speaking, the events. So, I'm doing my best.

Mr. STEWART. Tough to keep them straight sometimes, isn't it?

Mr. WEINGARTEN. Not when the events are significant. I certainly remember Bud Holmes' indictment.

Mr. STEWART. OK. When they're significant, they stick out a little more?

Mr. WEINGARTEN. Obviously.

Mr. STEWART. And this was not significant—meeting with Mr. Dantin and Mr. Holmes?

Mr. WEINGARTEN. I certainly remember notifying Holmes' attorneys that an indictment was coming and I remember meeting with Holmes' attorneys.

Mr. STEWART. OK. I'm not through with that exhibit. Let me read you the next sentence.

"Weingarten added that Holmes—and there's a quote here—'did not have to be indicted' if he would fill in some gaps in the Grand Jury investigation. Weingarten said that Holmes is a 'savvy guy' who would understand what Weingarten meant."

I noticed you used the term "savvy guy" when you interviewed Judge Nixon in 1984. Is that a phrase you like to use?

Mr. WEINGARTEN. I don't know if I like to use it. I'm sure I've used it more than once.

Mr. STEWART. OK. Is Mr. Dantin's statement accurate here?

Mr. WEINGARTEN. I don't remember my exact words. I remember the meeting. I remember my purpose. My purpose was specific—

that was to encourage them to make a proffer. Let the United States know at that point what evidence Bud Holmes had.

You have to place this in context. We had evidence at this point from Wiley Fairchild and from Carroll Ingram, corroborating the conclusion that Judge Nixon had aggressively lied in the Grand Jury. Bud Holmes was viewed as a key participant in this. It was important for the United States to resolve this. There was tremendous media pressure.

Judge Nixon's lawyers were constantly on us to resolve this. So, there's absolutely no question that prior to indictment, I wanted to do everything in my power to encourage Bud Holmes' attorneys to make a proffer. Let us know what Bud Holmes knows.

Mr. **Stewart**. OK. Do you remember the point where Judge Nixon, in the Grand Jury, asked you to let you ask the questions and him answer the questions?

Mr. **Weingarten**. Sorry.

Mr. **Stewart**. Could we do that here?

Mr. **Weingarten**. I don't think I'm asking you any questions, but——

Mr. **Stewart**. I don't think you're answering them.

Mr. **Weingarten**. Well, I think I am, to the best of my ability.

Mr. **Stewart**. OK. Did you offer Bud Holmes and his lawyer, Maurice Dantin, in effect, you don't have to be indicted if you can give us something on Judge Nixon?

Mr. **Weingarten**. No, I really don't think I did. I think what I did was, I said make a proffer and we'll discuss what the resolution would be.

Mr. **Stewart**. OK. The statement then goes on—do you have any reason to doubt Maurice Dantin's word?

Mr. **Weingarten**. I don't know Maurice Dantin. I don't have one thing to say about his credibility one way or another. I just know him briefly from this case.

Mr. **Stewart**. He says, "Based on my experience as a prosecutor and my knowledge of the investigation of Holmes by the Federal Grand Jury, I understood that Weingarten was offering not to indict Holmes if Holmes would provide incriminating information about Judge Walter Nixon."

Was that the message you were giving?

Mr. **Weingarten**. I don't believe I was and I was not authorized to make that presentation and I doubt very much, as I look back, that I would have been authorized, under any circumstances by the Justice Department, to do that. So, without authorization, I don't think I did it. He may have picked up that inference. We had no experience negotiating together. I probably have been with Maurice Dantin 15 minutes in my life in a meeting.

Mr. **Stewart**. OK. So, if he drew that inference, it wasn't an inference you were trying to convey. You were just saying, give us anything you have, Mr. Holmes?

Mr. **Weingarten**. No, no. There's no question but that there was an assumption that with a proffer, the United States would be willing to negotiate with Bud Holmes. I mean, if you have any experience in the criminal system, as I'm sure you do, that's what happens in these instances. And there's no doubt that I was looking for a proffer from defense counsel.

Mr. STEWART. All right. Maurice Dantin though says here that you said Mr. Holmes "did not have to be indicted." Did you say that?

Mr. WEINGARTEN. No, I don't believe I did. I don't believe I was authorized to do it. If I wasn't authorized to do it, I wouldn't have. If he drew that inference——

Mr. STEWART. Well, that's not an inference. This is a statement in quotes and you say you didn't make that statement and he's wrong?

Mr. WEINGARTEN. I don't believe I did.

Mr. STEWART. Do you recall that you did not or you just don't believe you would have done it?

Mr. WEINGARTEN. Again, it's the same answer that I've given you on a number of occasions. I don't remember my specific words. I don't believe I made that statement.

Mr. STEWART. OK. Exhibit N-26 is the declaration of Bud Holmes—Paul Holmes, also known as Bud. Paragraph five is very similar words to what Mr. Dantin uses. "I and my attorney, Maurice Dantin, met with Federal Prosecutor Reid Weingarten. Weingarten informed me I was likely to be indicted that week." Now, you did tell him that. You've confirmed that. They're both right about that.

Mr. WEINGARTEN. I'm sure what I would have said is that the United States intends to present an indictment to the Grand Jury naming you as a defendant.

Mr. STEWART. OK. But, "I did not have to be indicted, if only I would fill in some gaps in Weingarten's investigation." Is Mr. Holmes right or wrong about that?

Mr. WEINGARTEN. I don't recall my specific words. I presume Holmes—I don't presume—Holmes was in attendance at the same meeting with Dantin. My answers to the questions are exactly as I said in reference to questions relating to Dantin.

Mr. STEWART. They're both wrong?

Mr. WEINGARTEN. I'm not saying that. I'm saying that my recollection is that I would have followed the procedures that I followed many, many times in the course of my prosecutorial career. I would have recognized my boundaries. I would have been aiming for a proffer from defense counsel and I would have done what I could to encourage him to make such a proffer, particularly given the circumstances and the state of this investigation.

Mr. STEWART. You then indicted Mr. Holmes. He didn't come forward with any information?

Mr. WEINGARTEN. Well, he came forward with a wacky idea that was discarded and then we presented an indictment.

Mr. STEWART. A wacky idea?

Mr. WEINGARTEN. Yes. The idea was, the whole thing will go away; Judge Nixon will resign.

Mr. STEWART. OK. And that didn't happen.

Mr. WEINGARTEN. No one took it seriously.

Mr. STEWART. All right. Because he knew what you really wanted was Judge Nixon?

Mr. WEINGARTEN. I don't know what he knew, Mr. Stewart.

Mr. STEWART. Well he obviously thought that since that was going to resolve his problems, he thought.

Mr. **Weingarten**. Well, he came back, I think actually it was Mr. Dantin that came back and said, well, the whole thing will go away because we can get Judge Nixon to resign—something to that effect.

Mr. **Edwards**. Mr. Stewart, do you request another ten minutes?

Mr. **Stewart**. I'm sorry, sir, I do.

Mr. **Edwards**. Without objection, it is so ordered.

Mr. **Weingarten**. Mr. Stewart, make no mistake about it. My assigned task was to make a decision at this point whether or not the possibility that Judge Nixon committed perjury was accurate or not accurate. That was the primary responsibility I had in Hattiesburg.

In addition, Bud Holmes was viewed as someone who had also committed malefactions. So, I had two responsibilities. Unquestionably, the primary responsibility at that time was to move as expeditiously as possible to resolve the allegations against Judge Nixon.

Mr. **Stewart**. All right. You then indict Mr. Holmes on five counts—or the Grand Jury indicts Mr. Holmes on five counts.

Mr. **Weingarten**. Right.

Mr. **Stewart**. He's facing 25 years.

Mr. **Weingarten**. If you add up all the potential sentences that could be imposed if he's convicted——

Mr. **Stewart**. What all the newspaper stories always say.

Mr. **Weingarten**. Correct.

Mr. **Stewart**. He's facing 25 years. And you indict him because you think you've got him on probable cause on all five counts; correct?

Mr. **Weingarten**. True.

Mr. **Stewart**. OK. Then you're picking a jury in Mr. Holmes' case and you agree to a non-felony deal with a cap, on your recommendation, to a sentence of one year?

Mr. **Weingarten**. Well——

Mr. **Stewart**. Is that right?

Mr. **Weingarten**. I don't think——

Mr. **Stewart**. Please answer my question.

Mr. **Weingarten**. Well, I don't think characterizing contempt as a non-felony—I mean, contempt——

Mr. **Stewart**. It's not a felony, is it?

Mr. **Weingarten**. It's not a felony; it's not a misdemeanor.

Mr. **Stewart**. It's a non-felony; correct?

Mr. **Weingarten**. The plea bargain speaks for itself. I'm sure you have an exhibit.

Mr. **Stewart**. It's a non-felony; is it not?

Mr. **Weingarten**. It's a hybrid—yes, whatever you want to call it.

Mr. **Stewart**. And he——

Mr. **Weingarten**. There was a big fight about that, whether or not it's a felony, whether or not it's a misdemeanor. I don't think it's either.

Mr. **Stewart**. And you recommended no more than a year in prison; correct?

Mr. **Weingarten**. The United States agreed, as a condition of the plea agreement, that he should not be in prison for more than a year.

Mr. Stewart. All right. And he beat that year.

Mr. Weingarten. He certainly did.

Mr. Stewart. He didn't serve a day of it.

Mr. Weingarten. Did not.

Mr. Stewart. Thank you, Mr. Chairman.

Mr. Edwards. Special Counsel Baron, do you have questions?

Mr. Baron. Yes, Mr. Chairman, but I would like to defer to Assistant Special Counsel Pam Naughton, with your permission.

Mr. Edwards. Yes.

Ms. Naughton. Thank you, Mr. Chairman.

Mr. Weingarten, I just want to go over just a few things that you testified to on questioning by counsel for Judge Nixon.

Mr. Weingarten. OK.

Ms. Naughton. Now, you've testified at great length about the date of the phone call from the farm—that is, the date that Bud Holmes testified he had a conversation with Judge Nixon and Judge Nixon came out to his farm. And you testified that that date became a great issue at the trial.

Can you tell us when that date—that is, March 14th, 1982, became——

Mr. Weingarten. May.

Ms. Naughton. Excuse me. May 14th, 1982, became an issue at the trial?

Mr. Weingarten. Well, Holmes always took the position that to the best of his recollection, the call was May 14th. He hooked it to completely unrelated events. There was a wedding. There was a fracas at his bar. And his recollection is that Judge Nixon was around during those events and that was when they went to the farm and had contact with Wiley Fairchild.

Carroll Ingram's recollection was that he learned about these events in the Fall of 1982 and he specifically recalled that he learned about these events in connection with an effort by Judge Nixon to get more investments from Wiley Fairchild. We knew from independent evidence that there was a party for Judge Nixon in October of 1982 at Bud Holmes' bar. We learned from Wiley Fairchild that that's when there were subsequent discussions about another transaction.

And in addition, because the October date is closer to the passage of files, it made more logical sense that the call took place in October. Nevertheless, Bud Holmes testified to the best of his recollection. Now, Judge Nixon—of course we didn't have any idea what Judge Nixon's defense was going to be prior to trial. At trial, he took the firm position that he simply wasn't in Hattiesburg on May 14th.

I didn't view that as cataclysmic, that discrepancy, because I wasn't certain that May 14th was the day. Nevertheless, there were lots of Government witnesses, and there was a stipulation to this effect, who placed Judge Nixon in Hattiesburg on that occasion and the dental records surfaced later.

Ms. Naughton. I want to get to that. My question was, when did you first become aware that Judge Nixon would assert to you that he was not in Hattiesburg on May 14th, 1982?

Mr. Weingarten. I can't remember if Mr. Fawer mentioned it in his opening statement. If not in his opening statement—he may have, and if he didn't, when he started cross-examining Bud Holmes.

Ms. **Naughton**. So, at any rate, it was not prior to trial?

Mr. **Weingarten**. No.

Ms. **Naughton**. And I take it that Judge Nixon, at trial, testified that a conversation with Wiley and with Bud Holmes regarding the Drew Fairchild situation did not occur until 1983; is that correct?

Mr. **Weingarten**. That's correct.

Ms. **Naughton**. And 1983 would have been after the case was passed to files?

Mr. **Weingarten**. Correct.

Ms. **Naughton**. So that was the significance in the dates; is that correct?

Mr. **Weingarten**. Yes, yes.

Ms. **Naughton**. Now, I want to call your attention to exactly what Judge Nixon testified to regarding that date. If you could please get out—and for the members' benefit, this is the transcript book, which is labeled by witness and it is Judge Nixon's testimony. I direct your attention to page 1547.

Now, if you could read for the record, Mr. Weingarten, starting at the bottom of the page, these are questions that Judge Nixon's attorney asked of him on his direct examination—starting with the last line, please.

Mr. **Weingarten**. "QUESTION: I want to come back. You've heard Bud Holmes' testimony under oath concerning your presence in Hattiesburg, this city, on May the 14th, 1982; am I correct?

"ANSWER: Yes, you're correct.

"QUESTION: Now, that's the date he attributed this conversation to you; am I right?

"ANSWER: Right.

"QUESTION: First of all, were you in Hattiesburg for one minute on that day?

"ANSWER: No.

"QUESTION: Where were you?

"ANSWER: I was in Biloxi."

Ms. **Naughton**. OK. Now, turning your attention to page 1556 of that same testimony—that is, direct examination of Judge Nixon, could you read from the question starting at the top of page 1556?

Mr. **Weingarten**. "QUESTION: In any event, as you sit on the stand, are you positive that you did not come to Hattiesburg that day?

"ANSWER: Yes.

"QUESTION: Where did you spend the entire day?

"ANSWER: In my chambers in Biloxi."

Ms. **Naughton**. And again, I direct your attention to page 1591—excuse me. Let's go first to page 1768 and now we are into cross-examination of Judge Nixon by yourself.

Mr. **Weingarten**. OK.

Ms. **Naughton**. And again, the discussion is of his whereabouts on May 14, 1982. Could you start at the top of the page, please?

Mr. **Weingarten**. "QUESTION: When you say commute, would this be during a period when you would be sitting, during a period of two, three or four days?

"ANSWER: Yes.

"QUESTION: When would you return in the evening?

"ANSWER: After court, whatever time we recessed for the day.

"QUESTION: If you were not sitting in Hattiesburg, do you ever recall coming up to Hattiesburg just for a day in a non-court setting?

"ANSWER: I don't recall that.

"QUESTION: OK. Go ahead.

"ANSWER: I've come up for doctor's appointments at times or dental appointments.

"QUESTION: What's the name of your dentist?

"ANSWER: Doctor—I had Dr. Lowrey Faler, who was my periodontist."

Ms. NAUGHTON. And please continue, page 1769.

Mr. WEINGARTEN. "QUESTION: Aside from that, any other time that you can ever recall doing it?

"ANSWER: No, unless I was passing through.

"QUESTION: I wasn't talking about that.

"ANSWER: No.

"QUESTION: I asked you specifically, Judge Nixon.

"ANSWER: No.

"QUESTION: Whether from Biloxi to Hattiesburg you returned?

"ANSWER: No.

"QUESTION: Just turn to what you raised. I take it, however, on occasion, anytime you were traveling one of the more distant locations, you would pass through Hattiesburg?

"ANSWER: That's correct.

"QUESTION: Without belaboring it, on May 14th, as I understand it, the Court record places you, I think it's Defendant Exhibit 30, hearing motions at 10:30 in the morning in Biloxi; is that correct?

"ANSWER: May 14th, 1982?

"QUESTION: 1982.

"ANSWER: Yes.

"QUESTION: You testified the rest of your day was spent in preparation for the asbestos litigation beginning next Monday?

"ANSWER: Yes.

"QUESTION: Did you spend any time that day in Hattiesburg?

"ANSWER: No."

Ms. NAUGHTON. OK. Thank you. So virtually on three occasions during his examination, Judge Nixon testified that he did not spend "one minute" in Hattiesburg on that day; is that correct?

Mr. WEINGARTEN. Right.

Ms. NAUGHTON. Now, did the Government have in its possession documents that indicated he indeed was in Hattiesburg on May 14th, 1982?

Mr. WEINGARTEN. In its constructive possession in a box in the office.

Ms. NAUGHTON. Now, you testified these were dental records belonging to a Dr. York, a dentist in Hattiesburg; is that correct?

Mr. WEINGARTEN. Correct.

Ms. NAUGHTON. Do you recall approximately when you obtained the records from Dr. York?

Mr. WEINGARTEN. No. I remember when I learned about it. After our discussions with Carroll Ingram, he told us about the relationship between Dr. York and Judge Nixon and it would have been soon after that.

Ms. NAUGHTON. Was it in 1984?

Mr. WEINGARTEN. I would have thought early 1985—I'm just guessing.

Ms. NAUGHTON. But at any rate, Carroll Ingram is volunteering this information about the possibility of a gratuity Dr. York gave to Judge Nixon in the area of free dental services?

Mr. WEINGARTEN. Correct.

Ms. NAUGHTON. So you were exploring that possibility and you subpoenaed his dental records?

Mr. WEINGARTEN. Correct.

Ms. NAUGHTON. Now, you testified that you did not give over these dental records to defense counsel prior to trial.

Mr. WEINGARTEN. Correct.

Ms. NAUGHTON. Can you explain to us why you did that?

Mr. WEINGARTEN. The allegation was that Judge Nixon had received a gratuity. This would be incriminating evidence. I didn't view as Rule 16 material. I didn't view it as Brady material. I didn't feel any responsibility to turn it over. I can't remember specifically, but there may have been an issue on this specific evidence whether or not we could have introduced it at trial as related bad events.

It's called 404(b) material that may have been part of the motion. The motion was denied by the Judge. The Judge said, you can't introduce any evidence of unrelated bad acts. To me, that made the dental records moot and I didn't think about them again. I did not associate the May 14th date. I think there were several visits to the dentist. I did not associate the May 14th date to Bud Holmes' testimony. I also didn't expect the May 14th date to be a big deal at trial.

Ms. NAUGHTON. So, during the trial, while you were participating in the trial, did you know indeed that those dental records had the date May 14th, 1982 on them?

Mr. WEINGARTEN. No, I made no association.

Ms. NAUGHTON. Now, was this an issue at the motion for a new trial, the fact that these records were not provided to the defense at or before trial?

Mr. WEINGARTEN. As I recall, they became one. What happened was, the probation office had to make a pre-sentence report. The probation officer basically said, comb your files. Any relevant information, we want to see. I had a woman who worked with me at trial go through the files. She showed me the files.

She said something to the effect, I don't know if you're going to be happy or sad when you see this, but here's this file. The fact that the records came out at the post-trial hearing and then there was a challenge made that we should have turned it over as Rule 16 material. The Judge ruled on it and he denied the motion.

Ms. NAUGHTON. When you say Rule 16, why don't you explain to us exactly what that is?

Mr. WEINGARTEN. It's the obligation that the United States has to turn over materials to the defense in advance of trial.

Ms. NAUGHTON. And is this material that's pertinent to the defense case?

Mr. WEINGARTEN. Sure.

Ms. NAUGHTON. And at the time you were subject under the order, did you know that the Judge was going to deny that he was in Hattiesburg on May 14th?

Mr. WEINGARTEN. I didn't anticipate it and as the Judge ruled, the evidence was very favorable to the United States.

Ms. NAUGHTON. That is the dental records?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. Mr. Weingarten, had you known that the dental records indicated he was in Hattiesburg on May 14th, 1982, would you have used them in your cross-examination of Judge Nixon?

Mr. WEINGARTEN. I expect so.

Ms. NAUGHTON. Now, as to Judge Nixon's testimony at trial, was he asked the question whether or not, while he was giving his Grand Jury testimony, he recalled or was aware of the meeting with Bud Holmes at the farm and the telephone call placed to Wiley Fairchild?

Mr. WEINGARTEN. I'd be surprised if I didn't ask him.

Ms. NAUGHTON. Let's turn then to Judge Nixon's testimony, page 1591. You are asking him at this point about his testimony in the Grand Jury—that is, the testimony for which he was indicted. And you asked him whether or not he remembered the events—that is, the meeting with Bud Holmes at the farm and the subsequent phone call to Wiley Fairchild. If you could please start at line seven and read that for the members.

Mr. WEINGARTEN. My question was, "And you're in the Grand Jury, were you aware at the time, that you remembered these events?

"ANSWER: Yes.

"QUESTION: Why then? I understand you weren't asked the questions, but I want to go a step further. Why didn't you volunteer the information to the Grand Jury? Just volunteer it as an extra tidbit for them?

"ANSWER: All right. The focus of the entire investigation, the interview with me by Mr. Weingarten and Mr. Whitespunner, all of the news media publicity, my conversations with Bill Goodman, my attorney all showed that the focus of the investigation was whether there was any link or connection between the Drew Fairchild drug case and my oil and gas transaction with Wiley Fairchild. Bill Goodman and I spent many hours together.

"QUESTION: That's your attorney?

"ANSWER: Yes.

"QUESTION: Go ahead.

"ANSWER: With reference to that matter, with reference to the impending Grand Jury investigation, we discussed it. He's a good lawyer. He advised me as any good lawyer would advise his client, to listen to the questions and answer the questions, to be responsive to them and I did.

"QUESTION: Had you ever been a witness before in a Grand Jury?

"ANSWER: That was the first time I'd ever been a witness.

"QUESTION: In any proceeding?

"ANSWER: In any proceeding.

"QUESTION: Did you follow or try to follow his advice in the Grand Jury?

"ANSWER: Yes, I did.

"QUESTION: When you went in that Grand Jury, what, in fact, was the focus of the inquiry?

"ANSWER: The focus was the Drew Fairchild drug case . . ."

I guess this is not cross-examination. This is direct.

Ms. **Naughton**. That's correct.

Mr. **Weingarten**. "ANSWER: The focus was the Drew Fairchild drug case and the oil and gas transaction that I had with Wiley Fairchild and whether there was any connection or link between the two.

"QUESTION: And was there?

"ANSWER: Absolutely not.

"QUESTION: Were you intent on making that clear to the Grand Jury?

"ANSWER: Yes.

"QUESTION: To move on from that point in time"——

Ms. **Naughton**. OK. You can stop there. Mr. Weingarten, why didn't you ask Judge Nixon about the telephone call at the time he testified at the Grand Jury?

Mr. **Weingarten**. I had no idea about it.

Ms. **Naughton**. You didn't know of it?

Mr. **Weingarten**. No.

Ms. **Naughton**. Did the trial court rule at trial that the fact of the phone call and meeting with Bud Holmes was material to the investigation that the Grand Jury was conducting?

Mr. **Weingarten**. Yes.

Mr. **Edwards**. The subcommittee will recess for ten minutes for a vote in the House of Representatives.

[Recess.]

Mr. **Edwards**. The subcommittee will come to order. Ms. Naughton, you may continue.

Ms. **Naughton**. Mr. Weingarten, we were at the point where we were discussing Judge Nixon's trial testimony. If I can summarize, then.

According to the portion you've read, basically, Judge Nixon's testimony was that, yes, at the time he testified in Grand Jury, he did recall the conversation you had with Bud Holmes, and the ensuing telephone call to Wiley Fairchild, but did not volunteer it because he was not asked.

Is that an accurate summary of his defense at trial?

Mr. **Weingarten**. Yes, I think that's fair.

Ms. **Naughton**. Now, once you learned of the existence of the telephone call, which I believe you testified was first from Wiley Fairchild in late fall of 1984.

Mr. **Weingarten**. Correct.

Ms. **Naughton**. Did you invite Judge Nixon back into the Grand Jury to question him about the telephone call?

Mr. **Weingarten**. I did not.

Ms. **Naughton**. Why not?

Mr. **Weingarten**. When we learned of the telephone call, it raised for the first time the serious possibility that Judge Nixon had testified falsely.

We believed our responsibility at that point was to find out whether or not that possibility was true. We proceeded with our investigation, as I testified yesterday.

When we came to the conclusion that there was a reasonable basis to conclude that Judge Nixon had lied in the Grand Jury, and had also committed the crime of gratuity, we then approached his lawyers. And there were extensive discussions between his lawyers and the Justice Department on how to resolve the matter.

Ms. NAUGHTON. Did you point out to his counsel that you believed that the Judge had possibly given false statements to the Grand Jury?

Mr. WEINGARTEN. I think we made a stronger statement. I think we represented to his counsel that we believed that Judge Nixon had committed perjury. We took out the transcripts, and we showed counsel where we thought the perjury was.

Ms. NAUGHTON. Who was Judge Nixon's counsel at that time?

Mr. WEINGARTEN. Bill Goodman and Griffin Bell.

Ms. NAUGHTON. And did either of them volunteer to ask Judge Nixon or to instruct Judge Nixon or to advise Judge Nixon to go back in a Grand Jury?

Mr. WEINGARTEN. No.

Ms. NAUGHTON. Had Judge Nixon asked to testify again in the Grand Jury to clarify the point regarding the telephone call and the meeting, would he have been welcomed at the Grand Jury?

Mr. WEINGARTEN. Absolutely.

Ms. NAUGHTON. And did your foreman so testify to that, the Grand Jury foreman so testify to that, in trial?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. Now, counsel also asked you yesterday a lot of questions about the supposed ambiguity of the word "discuss". The word "discuss" was used in count three of the indictment against Judge Nixon, referring to the fact that he discussed the Drew Fairchild case with Bud Holmes.

Mr. WEINGARTEN. Correct.

Ms. NAUGHTON. Did the Fifth Circuit, in its opinion on appeal, address that issue of whether or not the word "discuss" was ambiguous?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. Directing your attention to Exhibit 44 in the subcommittee's exhibit book, and for the Members, this is Committee's Exhibit No. 44, the Fifth Circuit Court of Appeals' opinion, decided on April 30th, 1987.

And I direct your attention, please, to page 3847.

Mr. WEINGARTEN. I'm there.

Ms. NAUGHTON. OK, the bottom of the page, could you please read us that full paragraph, and omit the citations.

Mr. WEINGARTEN. OK. There is no merit in appellant's belated attempt to argue ambiguity. There is certainly no ambiguity in the question: Did Holmes ever discuss the Drew Fairchild case with you?

This was not a question that required a recollection covering a full lifetime, but necessarily was limited to the period following Drew's indictment, and Holmes' retirement from office in 1984.

Its clarity was amply demonstrated by appellant's voluntary comments which followed, in which he said he had read in the newspapers that, quote, this is an investigation of the Drew Fairchild criminal case, end of quote, and that he, quote, didn't know anything about it until he read that account in the newspaper, end of quote.

That he had, quote, never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody with respect to the case, end of quote.

The record shows that appellant answered the question with hesitancy, evasion or qualification. If in the natural meaning, in the context in which his words were used, they were materially untrue, perjury was established.

Ms. NAUGHTON. Mr. Weingarten, I take it at trial one of the Judge's defenses was that the questions posed to him in the Grand Jury were ambiguous; is that correct?

Mr. WEINGARTEN. You know, I don't really remember that. It may have been. I think his primary defense was that I didn't ask the right question and he didn't give the answer.

Ms. NAUGHTON. Directing your attention to Exhibit No. 37, which would be the indictment of Judge Nixon, and directing your attention to count four of that indictment, what was your question to him in Grand Jury that elicited the response for which he was indicted and convicted?

Mr. WEINGARTEN. All right, Judge, do you have anything you want to add?

Ms. NAUGHTON. That's the entire question?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. Now, you were also asked at length by Mr. Stewart about the plea agreements that you reached with the Fairchilds, with Bud Holmes, and to an extent, the agreement reached with Carroll Ingram, or at least a clarification of his status.

Did these agreements specify that these witnesses had to testify truthfully at trial?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. And did you have any reason to believe that they violated that condition of their plea agreement?

Mr. WEINGARTEN. No.

Ms. NAUGHTON. You stated during your examination by Mr. Stewart that you were skeptical of Bud Holmes' testimony. Would you explain what you mean by that?

Mr. WEINGARTEN. Well, I had been authorized to present an indictment to the Grand Jury naming Bud Holmes as a defendant in a perjury case.

Naturally, I believed Bud Holmes was capable of telling untruths. I only put him on the stand when I was satisfied that I believed he would tell the truth at trial.

I believe that since the testimony was corroborated in substantial ways, I believe he had every incentive at the time to be truthful, and I knew the process. I knew he was going to undergo grueling cross-examination. And I believed it was my responsibility at the time to proceed as I did.

Ms. NAUGHTON. All right, now, when you say you were satisfied with what he said, that what he said was truthful, what factors led you to that conclusion?

Mr. WEINGARTEN. Well, the progression of the investigation caused us to believe that, in fact, Judge Nixon had this relationship with Wiley Fairchild; that in fact this relationship led to Wiley Fairchild seeking out Judge Nixon when he was dissatisfied with the way his son's case was being handled; that in fact Judge Nixon followed up on this meeting with a trip out to Bud Holmes; and in fact, on that occasion, he put a good word in for Drew Fairchild; and that in fact, that Holmes and Judge Nixon got back to Wiley Fairchild and so reported.

Ms. NAUGHTON. In terms of corroboration——

Mr. WEINGARTEN. The corroboration came from Wiley Fairchild; it came from circumstantial evidence that the case was passed to the file; it came, I think in a very important way, from Carroll Ingram.

Of the three witnesses, it was my subjective believe that Ingram's testimony was the most significant. Ingram testified that he heard directly from Judge Nixon that Judge Nixon had helped Drew Fairchild with Bud Holmes.

Ms. NAUGHTON. Now, getting to the oil deal, you were asked some questions about the gratuity count, that is, count one for which Judge Nixon was ultimately acquitted.

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. And you were asked whether or not—I believe the sense of the questioning was whether or not it was improper to include that in the indictment, since he was ultimately acquitted of it, and whether or not you felt you had sufficient evidence.

First of all, your statements made to reporters, and your statements apparently at some speech at a law school, were those after all the evidence had come in at trial?

Mr. WEINGARTEN. Well, certainly, my speech at the law school was long after the trial.

It was a very informal setting at trial. And as I said, there was a sequestered jury, so there was not a concern that these comments would appear in the press, and these comments were off the record.

I would walk off the courtroom as the case was going on, and I would chat with reporters.

Ms. NAUGHTON. OK, so this is basically your evaluation of how the evidence came in at trial, is that an accurate statement?

Mr. WEINGARTEN. Fair.

Ms. NAUGHTON. Did you at any time prior to indicting on the gratuity count feel you did not have probable cause to indict Judge Nixon for the gratuity?

Mr. WEINGARTEN. Absolutely not.

Ms. NAUGHTON. OK, can you summarize for us what evidence you had that Judge Nixon had received a gratuity?

Mr. WEINGARTEN. Yes. The fundamental points were the disparity between the value paid and the value received. Wiley Fairchild awhile back acquired these interests for a pittance.

I thought the significant relevant evidence was their value at the time they were transferred. And there was a great disparity in their value in what Wiley Fairchild ultimately received.

Ms. NAUGHTON. OK, could you explain that for a minute? You said that what Wiley might have paid for the property, but why did you feel it was irrelevant, what the property was worth, at the time it was conveyed to Judge Nixon?

Mr. WEINGARTEN. Well, when you charge someone with a crime, it is his intent at the time of the transfer, not before. I mean, that may be relevant evidence, and obviously, the defense made a big deal of it.

But I think the point was, when Wiley Fairchild made the decision to give Judge Nixon an—it was obviously a freebie. It was obviously from Wiley Fairchild's point of view a sweetheart deal. Of that there was no doubt. I mean, Wiley Fairchild testified to that.

I think his words were, he didn't want it to look like a 100 percent gift. The last thing Wiley Fairchild cared about was getting something in return. He had no idea about the notes.

Of course, he coupled that with Jarvis' testimony that he was asked to produce the mineral royalty deeds; he was the administrative assistant or the bookkeeper, but he had no idea himself about the notes.

I mean, there was a suggestion there that there wouldn't have been any notes at all. The notes appeared. Money was not paid back. And so royalties were received of greater value.

And then there was the backdating. As I sit here today, I can come up with no legitimate reason for the backdating. It had no legal, or economic, impact on Judge Nixon's investment.

I mean, I think the best you can interpret the backdating from Judge Nixon's point of view, is that he wanted the interests to look like they were transferred in 1980 because they were less valuable then; I mean, there was that suggestion at trial. They were less valuable in 1980 than in 1981.

Wiley Fairchild sought to transfer to Judge Nixon valuable royalty interests. And as they approached closer to production, they were obviously worth more, because there was more geological information that had been amassed in 1981, than in 1980.

Ms. NAUGHTON. And also the wells at the time were being prepared for production, isn't that true?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. And they started to produce, I believe, in early 1982; is that correct?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. Now, is it true that Judge Nixon did not—first of all, who financed Judge Nixon's $9,500 investment into the wells that Wiley put him into?

Mr. WEINGARTEN. Fairchild.

Ms. NAUGHTON. Fairchild offered to do that?

Mr. WEINGARTEN. My recollection of his testimony is, he had no idea whether or not he offered to do that. That was Ingram who engineered it, and he didn't particularly care.

Ms. NAUGHTON. Did Judge Nixon put up any money up front?

Mr. WEINGARTEN. No.

Ms. NAUGHTON. When did he pay off the notes to Mr. Fairchild?

Mr. WEINGARTEN. He would receive royalty payments, and then he would make a payment back to Fairchild, less than what he received.

Ms. NAUGHTON. So in effect he did not even start paying off the notes that he said were entered into in 1980 until 1982 after the wells started to produce; is that correct?

Mr. WEINGARTEN. Correct.

Ms. NAUGHTON. The interest that ran on the notes between 1980, when Judge Nixon said the agreement began to be effective, and 1981, when the documents indicate the deeds were filed, when was that interest paid?

Mr. WEINGARTEN. I thought that was a significant point. They were only paid after the Government's investigation, suggesting that in reality everybody involved in the investment knew that it was February 25th, 1981.

When the Government got onto it, they were quick to pay the interest on it back to 1980, to make it look in fact like it was a 1980 deal.

Ms. NAUGHTON. Now, Judge Nixon invested $9,500, and paid interest on the notes. Did you have an estimate at the time of trial as to how much he had received in royalty payments?

Mr. WEINGARTEN. I think about $60,000.

Ms. NAUGHTON. Did there come a time, also as part of your evidence in the gratuity count, did there come a time when Judge Nixon visited Wiley Fairchild and offered to—and thanked him for putting him in the oil deal, and to help him if he could?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. What did Judge Nixon tell Wiley Fairchild?

Mr. WEINGARTEN. Well, from Wiley Fairchild's testimony, there was no negotiation between the two men, I don't think the two men had ever met when the deal was put together.

But subsequent to that, there was a meeting. Judge Nixon thanked Wiley Fairchild and made the comment, if I can help you, I will; if I can't, I'll tell you I can't.

Ms. NAUGHTON. Did Judge Nixon dispute this at his trial testimony?

Mr. WEINGARTEN. Generally speaking, no. There may have been a difference as to when the meeting actually took place; but in terms of making that comment, there was no dispute.

I think Judge Nixon said he was talking about providing advice to Wiley Fairchild.

Ms. NAUGHTON. Legal advice?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. And could you tell us, judges are required to file financial disclosures every year, are they not?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. And what did the evidence reveal regarding Judge Nixon's 1980 and 1981 financial disclosures regarding these investments in the oil wells?

Mr. WEINGARTEN. As I recall the interests did not appear on the 1980 form that was filed in May of 1981, but appeared in the 1981 form that was filed in May of 1982.

Ms. NAUGHTON. So even though Judge Nixon's position at trial was that these agreements were in 1980, he did not so file that on his financial disclosure forms?

Mr. WEINGARTEN. He did not.

Ms. NAUGHTON. As to the gratuity count, finally, did you ask for an instruction, according to Fifth Circuit law, on the issue of the gratuity?

Mr. WEINGARTEN. I wanted the judge to basically read from *U.S.* v. *Dixon.* That is the Fifth Circuit case that I discussed yesterday with Congressman DeWine, and he turned me down.

I wanted the instruction consistent with the law as I thought the Fifth Circuit required the law to be. The Judge did not agree, and instead, read a different instruction.

Ms. NAUGHTON. Did the Fifth Circuit take up the issue of whether or not it was proper to try the gratuity with the three perjury counts?

Mr. WEINGARTEN. Yes.

Ms. NAUGHTON. And I direct your attention again to the Fifth Circuit opinion, and this is on the same page, 3848, of Exhibit 44, the bottom of the page, starting with: There is no merit.

Mr. WEINGARTEN. Page 3848?

Ms. NAUGHTON. Yes.

Mr. WEINGARTEN. There is no merit in appellant's contention that the bribery count was insufficient as a matter of law. And I presume Judge Van Grafflin was talking about the gratuity count here.

Quote: An indictment returned by a legally constituted and unbiased Grand Jury, if valid on its face, is enough to call the trial of the charge on its merits, end of quote.

Appellant did not move for severance of the bribery count. Since the proof on all four counts was necessarily intertwined, no prejudicial error resulted from the fact that they were tried together.

Shall I continue?

Ms. NAUGHTON. No, that's fine.

Is it true, then, that Judge Nixon never moved to sever the counts in the trial, that is, the bribery count from—well, the gratuity count from the perjury counts?

Mr. WEINGARTEN. Did not. That's what the opinion said.

Ms. NAUGHTON. And when you stated to Mr. Stewart that you necessarily would have had to introduce evidence of the gratuity, even if the perjury counts were tried separately, what did you mean by that?

Mr. WEINGARTEN. If there had been a severance, and I was only allowed to proceed on the three perjury counts, I feel certain that a judge would have allowed me to introduce evidence of the minimal transfer to explain the relationship between Judge Nixon and Wiley Fairchild that would have caused Judge Nixon to do what he did, and to testify as he testified.

I am very confident that that evidence would have been admissible.

Ms. NAUGHTON. Because those facts would have been material to proving why the perjury would have been committed?

Mr. WEINGARTEN. Sure.

Ms. NAUGHTON. Who represented Judge Nixon at trial?

Mr. WEINGARTEN. Michael Fawer from New Orleans, Louisiana.

Ms. NAUGHTON. And in your opinion, was Judge Nixon ably represented by counsel?

Mr. WEINGARTEN. He's not a particularly close friend of mine, but he's an extraordinarily talented lawyer. I thought he was brilliant during the trial.

Ms. NAUGHTON. Did you believe that the trial judge was fair and allowed the defense latitude?

Mr. WEINGARTEN. Yes. It was definitely a laissez-faire trial judge who let the parties try the case.

Ms. NAUGHTON. Now, my final question is, you were asked about the Petit Bois Island case by Mr. Stewart. And the thrust of the questions were that since Judge Nixon had awarded a very large judgment, $6.2 million, to those seeking money from the Government for the land condemnation, that somehow the Department of Justice felt this was an unfair decision and therefore decided to prosecute Judge Nixon.

Do you recall that line of testimony?

Mr. WEINGARTEN. I don't know if he said it exactly that way, but I certainly remember the discussion with Mr. Stewart about Petit Bois.

Ms. NAUGHTON. First of all, other than what you have testified to regarding Petit Bois, and the fact that they shared the same Grand Jury, did the fact of Judge Nixon's being investigated for the Petit Bois allegations, that is the allegations of bribery, have anything to do with the Fairchild case, in terms of what you indicted him for and going forward on it?

Mr. WEINGARTEN. The Petit Bois case didn't influence one thing that I did, except for the occasion when McMullen came forward, made his allegation, and then we had to consider the Petit Bois investigation in connection with the timing of the presentation of the indictment.

Other than that, what Ralph Martin did in Petit Bois didn't influence me in anyway at all.

Ms. NAUGHTON. And when you say, McMullen, whom do you mean?

Mr. WEINGARTEN. McMullen was a banker from Jackson, Mississippi who sometime late in 1985 had been pursued in a wholly separate bank fraud investigation in Jackson. And he came forward and alleged that there was a bribe conspiracy involving Stocks and Lewis and Bud Holmes to get to Judge Nixon to guarantee a large judgement for Stocks and Lewis.

McMullen was—I think he was the president of one of the biggest banks in Mississippi. The allegation was taken seriously. It was investigated. And it arose at about the time when we were preparing to present the Wiley Fairchild case to the Grand Jury—not the Wiley Fairchild—the indictment against Judge Nixon in connection with the Wiley Fairchild matter.

So there were discussions about how to time the two matters. But certainly, the fact that Judge Nixon had issued a ruling that was adverse to the United States in the Petit Bois case had nothing whatever to do with the investigation that I conducted.

Ms. NAUGHTON. Did you ever hear, write, or see on paper, or in any way have anyone indicate, from the Department of Justice or the Federal Bureau of Investigation, that Judge Nixon should be prosecuted because of the decision he rendered in the Petit Bois Island case?

Mr. WEINGARTEN. Absolutely not.

Ms. NAUGHTON. Thank you, Mr. Chairman, I have no further questions.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much.

Mr. Weingarten, I would like to ask some questions to clarify the record as well as to educate me relative to the backdating of the oil and gas interest royalty deeds by Wiley Fairchild to Judge Nixon.

And I refer specifically to subcommittee exhibit number 4, which contains photocopies of three deeds from Fairchild to Nixon dated February 25th, 1980.

Are these the deeds in question?

Mr. WEINGARTEN. These would have been the backdated deeds, yes.

Mr. SENSENBRENNER. And is it correct that these deeds were recorded, two of them on April 6th, 1981, and one on October 19th, 1982, according to the recording stamps on there?

Mr. WEINGARTEN. Correct.

Mr. SENSENBRENNER. Did Judge Nixon ever testify on oath that the agreements between himself and Fairchild were in 1980 rather than in 1981?

Mr. WEINGARTEN. Yes.

Mr. SENSENBRENNER. Now I would like to refer you to subcommittee Exhibit No. 26, which was Judge Nixon's financial disclosure statements made pursuant to the Ethics in Government Act of 1978 as amended.

The disclosure statement that is dated May 8th, 1981, and signed by Walter L. Nixon,Jr., does that contain any disclosure, either as to a transaction, or as to investments and trusts income and value for the calendar year 1980?

Mr. WEINGARTEN. Well, it reflects his financial transactions for the year 1980, correct.

Mr. SENSENBRENNER. Does it list any oil and gas deals with Wiley Fairchild in the transaction section?

Mr. WEINGARTEN. No.

Mr. SENSENBRENNER. Does it list any holdings of investments or trust or any income received during 1980 in that section of the financial disclosure report?

Mr. WEINGARTEN. Yes.

Mr. SENSENBRENNER. For the Wiley Fairchild deal?

Mr. WEINGARTEN. Not for Wiley Fairchild.

Mr. SENSENBRENNER. So it does not contain any information that at any time during 1980 he held a royalty interest in an oil and gas deal in partnership with Wiley Fairchild?

Mr. WEINGARTEN. Correct.

Mr. SENSENBRENNER. Now, as I understand it, the filing of a false financial disclosure statement by a public official that is required to file is a criminal offense; is that not correct?

Mr. WEINGARTEN. Correct.

Mr. SENSENBRENNER. So we have a case that, if Judge Nixon did own the oil and gas interest in 1980 in question, he filed a false financial disclosure statement?

Mr. WEINGARTEN. Correct.

Mr. SENSENBRENNER. And he testified that he owned that particular oil and gas royalty interest in 1980 under oath, did he not?

Mr. WEINGARTEN. Well, he testified—it was a little ambiguous, as I recall. He testified that that's when the deal was agreed to. He had to admit that he didn't sign the thing until 1981. That's when the papers were reduced.

So the argument was made that it was only legally enforceable when there were actual documents.

So I assume his defense would have been that, because the papers didn't pass in 1981, there was no deal.

Mr. SENSENBRENNER. But he ended up paying interest for the——

Mr. WEINGARTEN. Correct, correct.

Mr. SENSENBRENNER. —the amount that was due on the notes that he signed to pay for this transaction during 1980?

Mr. WEINGARTEN. That's absolutely correct.

Mr. SENSENBRENNER. Even though the interest was not paid in 1980.

Mr. WEINGARTEN. Correct.

Mr. SENSENBRENNER. Now, my question is, did the Government ever give any consideration to prosecuting Judge Nixon either for perjury in this respect or for filing a false financial disclosure statement?

Mr. WEINGARTEN. I thought the financial disclosure statement was true, because I didn't think there was a deal in 1980. I mean, our conclusion was, there was nothing in 1980, but rather, that the deal took place in 1981; that the documents prepared by Skip Jarvis were accurate.

So that when he filed a statement and didn't include the mineral interest in 1980, that technically——

Mr. SENSENBRENNER. Well, if the financial statement was true, then the testimony was false. And if the testimony was true, then the financial statement was false.

Mr. WEINGARTEN. Right.

Mr. SENSENBRENNER. So my conclusion is that there was a potential criminal offense, no matter when the transaction took place. And did the Government consider doing anything about that?

Mr. WEINGARTEN. We looked into the possibility. But again, I think the testimony from the defense, I think frankly they wanted their cake and to eat it too.

But with no documents, there was no formal legal deal in 1980. Now, of course, he did pay interest back. And I think his defense would have been, he didn't have to.

So that if you charged him with a false financial disclosure statement, he would have said, technically, there was no deal; I didn't have to include it in my statement.

Mr. SENSENBRENNER. Even though the royalty deeds were dated 1980 and placed on record some time later?

Mr. WEINGARTEN. All of this caused us to have tremendous suspicion about the whole arrangement. We didn't see a hook, a legal hook, to file a separate charge.

Mr. SENSENBRENNER. Thank you very much.

Mr. EDWARDS. Mr. Stewart?

Mr. **Edwards**. Mr. Stewart, anything come up that you feel necessary to question about?

Mr. **Stewart**. I would have a couple of questions, Mr. Chairman, yes, sir.

Mr. **Edwards**. We will certainly be pleased to allow another ten minutes.

Mr. **Stewart**. Thank you, sir.

Just wanted to go back for a second to the question you were asked about concerning the backdating and the value. When Skip Jarvis was wired up to go talk to Wiley in April, 1984, his purpose was to get some evidence against Wiley, right?

Mr. **Stewart**. No, I don't think that's fair. His purpose was to try and find out what was going on; to try and engage Wiley Fairchild in conversation.

Mr. **Stewart**. To try to prompt him to talk about this deal?

Mr. **Stewart**. Yes.

Mr. **Stewart**. OK. And the transcript, Exhibit 21, let me read it to you at page 12 where Mr. Fairchild says, here, I'll start with Jarvis: Because, see, at the time I didn't know it was going to be the judge. And you just had me do them in blank.

And then Fairchild says, but the deal had already been made. Jarvis: But see——

And then Fairchild says, we just dated it back to when it was made, see.

That's what Wiley Fairchild said when he's not—when he doesn't know he's being observed by the Government.

Mr. **Weingarten**. Correct.

Mr. **Stewart**. He says it was just dated back to when the deal was made orally.

Mr. **Weingarten**. That's what he said.

Mr. **Stewart**. OK. In an oral deal regarding land, under the statute of frauds, is not legally enforceable, is it?

Mr. **Weingarten**. That is correct.

Mr. **Stewart**. OK.

Mr. **Weingarten**. I think that is what I was inarticulately trying to say.

Mr. **Stewart**. So even though they had a verbal deal back in 1980, it was not an enforceable deal legally until 1981, and there was nothing to report on the financial disclosure form as you testified?y

Mr. **Weingarten**. Well, just to get to the first part of your question, I think Wiley Fairchild under oath testified a little differently than what he said here.

But my conclusion was, if there was no written deal in 1980, he didn't have to report it.

Mr. **Stewart**. OK, moving back in the same exhibit, it's I guess three pages from the end, the subcommittee has two defendant's exhibits together.

This is a further transcript of a further conversation, I believe on the same day, between Wiley Fairchild and Skip Jarvis.

Jarvis says, towards the bottom, you know you said they were asking about that stuff on Nixon. If—I don't know how much that royalty is producing but it can't—is the cost—those $2,500 notes, is that anywhere in the ballpark what that stuff was worth?

Mr. Fairchild says, when the deal was made, when the verbal deal was made, hell, yeah.

That's what he's saying, not knowing the Government's listening in on him, that that was the proper price.

Mr. WEINGARTEN. I'm not certain where you're looking, but if you're reading, I accept that.

Mr. STEWART. Mr. Chairman, I have no further questions—oh, I'm sorry, give me a moment.

Mr. Chairman, I have no further questions.

Mr. EDWARDS. Thank you very much, Mr. Weingarten. You are dismissed.

Mr. Stewart, I believe that are plans call for Mrs. Nixon to testify next. And then after Mrs. Nixon, you plan a summation?

Mr. STEWART. Yes, sir, I have prepared a statement or the outline of a statement.

Mr. EDWARDS. And how long do you think that will take?

I am trying to figure out whether or not we have to go over until Tuesday or not.

Mr. STEWART. I understand the concern. The Chair's ruling at the beginning was, of course, that I would answer questions, so that is fine, but that is a bit of a wild card in estimating time.

I would assume my remarks would be less than an hour, without questions.

Mr. EDWARDS. I believe that we will call Mrs. Nixon next, and then, hopefully, break for lunch, and then promptly at 1:30 or 2:00, whatever it is, we'll call you back.

Mrs. Nixon, do you have a statement?

[Witness sworn.]

TESTIMONY OF BARBARA NIXON

Ms. NIXON. No.

Mr. EDWARDS. Associate counsel Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

Mrs. Nixon, it's my understanding that the subcommittee has not subpoenaed you to testify, but rather your husband's counsel, Mr. Stewart, has asked for permission to have you make a presentation to us this morning, is that correct?

Ms. NIXON. I thought you were supposed to ask me some questions.

Mr. STEWART. Mrs. Nixon is being proffered on the question of the offense relating to the investigation conducted during the trial, Mr. Chairman and Members of the subcommittee, with reference to the May 14th date, 1982, and the efforts they made to determine that, when the dental appointment was not discovered until subsequently.

We made a proffer on that point. And counsel could ask her about that, or we could, whichever way you wish. But that is the point on which she is proffered.

Mr. EDWARDS. Very good. She has not been subpoenaed by the subcommittee. She is appearing voluntarily, and particularly on this issue of the dental appointments, and so forth.

You may proceed.

Mr. KEITH. Thank you, Mr. Chairman.

Mrs. Nixon, what is it you would like to tell the subcommittee with regard to the May 14th date, and your husband's testimony that he was not in Hattiesburg on that date when he testified at trial.

Ms. NIXON. Well, the date of May 14th came up in the trial. And you know of course we were trying to find where exactly he was.

But during the hearing—what was it, the hearing for the new trial—they said that May 14th, he was in Hattiesburg at the dentist's office.

And the reason we never questioned the dental appointment—never even asked for our dental records—was because I had brought my mother to the dentist, that dentist office, between the time of the indictment and the trial. And Dr. York had told me that the FBI had come there and gotten all our dental records and stuff there.

So we didn't even think about that date. You know, we didn't even think about asking Dr. York if he had been there, or anything about that. And I knew that they already had the evidence, you know, that he had been there.

And I couldn't understand why they didn't bring that up at trial. Because you know, they had the records, and we didn't. They weren't handed over to us.

Mr. KEITH. I see. I understand this is a difficult time for you, but I might just ask you a few questions about what you just testified to.

I believe you just said that there was some question about where Judge Nixon was on May 14th, 1982, at least at the time of trial?

Ms. NIXON. Well, when the date came up, we knew—he had motions that morning, the asbestos cases. And we were just trying to confirm exactly where he was, that he was there in Biloxi.

So we called different people and things like that, just trying to find out exactly.

Mr. KEITH. It's clear that Judge Nixon was in Biloxi in the morning, but there was some question about where he was that afternoon; is that right?

Ms. NIXON. Yes.

Mr. KEITH. And are you telling the subcommittee that Judge Nixon was not certain where he was on the afternoon of May 14th, and that that is why you were calling people?

Ms. NIXON. Well, we were trying to make sure that that's where he was, that he wasn't in Hattiesburg. And in fact, he was in Hattiesburg. The Government knew it all along.

Mr. KEITH. Can you tell us who you contacted to try to determine whether Judge Nixon was in Hattiesburg on that date?

Ms. NIXON. Well, we called—I called the Montessori School at home in Biloxi, because that is the day our daughter had her last day there, and we were trying to see if there was some kind of function that we would have been to that day.

Because that was, you know, a couple of years back.

Mr. KEITH. You called the Montessori School in Biloxi to try to find out whether Judge Nixon had been in Biloxi that afternoon?

Ms. NIXON. Yes, if we had been in Biloxi for some kind of function.

Mr. KEITH. And the reason for that would have been to establish that in fact Judge Nixon was in Biloxi that afternoon?

Ms. NIXON. Yes.

Mr. KEITH. Were you making this telephone call at the instructions of your husband or of his attorneys? Or exactly why were you calling?

Ms. NIXON. Well, when they came up with the May 14th date, of course we had to find out where we were, or where he was at that time. We just went over different things that could have been possible.

Mr. KEITH. At the time were you looking for what is called an alibi witness, or someone who could confirm——

Ms. NIXON. No, we were looking for where he would be, or something to recall. I mean we had to go by the calendar to see that he was there for the motions. You know, that was the way we found that out, the calendar of his office.

Mr. KEITH. But the Judge was not certain during trial whether he was actually in Hattiesburg that afternoon, and you were the person who was making the calls to try to determine exactly where he was.

Ms. NIXON. Yes. Not only me. You know, we were all just trying to make sure.

Mr. KEITH. Now, I believe you testified that one of the people you thought about calling was Dr. York?

Ms. NIXON. Well, we really didn't think about calling Dr. York. Because I myself knew, from the time I visited there, that the FBI had come and gotten all of our dental records and asked him questions and all, so I didn't even think about him.

You know, we checked on our Dr. Fowler, and he wasn't there at that time. And we called different friends that he would have been hunting with, and gone through Hattiesburg.

Mr. KEITH. Are you telling us that at least at the time of trial when you were trying to find out where Judge Nixon might have been that afternoon that one of the people you thought about contacting was Dr. York because you knew that the Judge had seen him on occasion for dental services?

Ms. NIXON. We thought—he really didn't enter my mind. Because we knew that the Government had those—you know, the records from there. So we didn't even think of calling him. There wasn't much use to it. The Government had all those records. And they had already been there, and knew that if he was there, they would have certainly brought it out. It would have saved us a lot of time.

Mr. KEITH. Well, the proof that the Government was offering at trial was basically Bud Holmes' testimony and the calendar entry that to a certain extent corroborated the date of May 14, 1982; isn't that right?

Ms. NIXON. Yes.

Mr. KEITH. Now, you indicated that you learned that Dr. York's records had been turned over to the Government?

Ms. NIXON. Yes.

Mr. KEITH. And this was something that Dr. York told you when you were in his office?

Ms. NIXON. Yes, when I was there with my mother.

Mr. KEITH. And so what you're telling us is, you and your husband relied upon at least your expectation that if there were something in Dr. York's records, that the Government would have brought that out at some point in time in its case in chief before Judge Nixon testified?

Ms. NIXON. Well, certainly; they were supposed to turn over any evidence they had. If they came up with that date, May 14th, you know, why wouldn't they show us that they had—that he was at the dentist in Hattiesburg on May 14th.

I mean, we certainly wouldn't have said that he wasn't if we knew that he was. I mean, they had the dental records.

Mr. KEITH. Did you and your husband or your husband's lawyers ever consider the possibility that the Government might have a record that it would wait to present to the jury during Judge Nixon's cross-examination to test his credibility on whether or not he was in fact in Hattiesburg on May 14th?

Ms. NIXON. No, I know nothing about that.

Mr. KEITH. That's all I have. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. No questions.

Mr. DANNEMEYER. No questions.

Mr. EDWARDS. I have no questions. Thank you very much.

Mr. HOLLIMAN. Your full name is Barbara Nixon?

Ms. NIXON. Yes.

Mr. HOLLIMAN. How long have you and Judge Nixon been married, Ms. Nixon?

Ms. NIXON. Twelve years.

Mr. HOLLIMAN. And you live where in Mississippi?

Ms. NIXON. In Ocean Springs.

Mr. HOLLIMAN. Ocean Springs is just across the bridge from Biloxi, is it not?

Ms. NIXON. Yes.

Mr. HOLLIMAN. And that's where your husband, that's the main Federal court in that section of the State?

Ms. NIXON. Yes.

Mr. HOLLIMAN. Now, then, about how many minutes drive is that from your house to the courthouse there?

Ms. NIXON. About five minutes.

Mr. HOLLIMAN. All right. And he went back and forth quite frequently there at the court. He was involved at this particular time, in 1982, in what has come to be known as the asbestos cases, which he later tried.

Ms. NIXON. Yes.

Mr. HOLLIMAN. Now, then, that of course was a very important case that occupied a great deal of time and involved thousands of people who were claiming injury and later proven to be injured as a result of asbestos.

Ms. NIXON. Yes.

Mr. HOLLIMAN. You don't have to give me the details of it, but you know about his occupation.

Ms. NIXON. Yes.

Mr. HOLLIMAN. Now, Judge Roper is a magistrate who sits there in Biloxi with Judge Nixon at that time; am I correct?

Ms. NIXON. Yes.

Mr. **Holliman**. Now, four years after 1982 you all found yourselves embroiled in this trial, very difficult trial, in Hattiesburg, Mississippi, where your husband was on trial?

Ms. **Nixon**. Yes.

Mr. **Holliman**. And in the middle of that trial, four years later, a question comes up, all of a sudden as to whether or not Judge Nixon was in Hattiesburg on May the 14th, 1982. And this question was of some concern to all of you?

Ms. **Nixon**. Yes.

Mr. **Holliman**. Judge Nixon, his lawyers, you, his secretary, everybody who was there?

Ms. **Nixon**. Betty Lou Watkins.

Mr. **Holliman**. And Betty Lou was there, was it not?

Ms. **Nixon**. Yes.

Mr. **Holliman**. It was a big trial with all kinds of exhibits, and it went on day after day after day, and this question came up in the middle of that trial?

Ms. **Nixon**. Yes.

Mr. **Holliman**. So you began to try to figure out where—the Judge did not think he had been in Hattiesburg on May 14, 1982, did he?

Ms. **Nixon**. Yes.

Mr. **Holliman**. You checked the dockets in Biloxi?

Ms. **Nixon**. Yes.

Mr. **Holliman**. Were calls made to Judge Roper to discuss what had happened that morning?

Ms. **Nixon**. Right.

Mr. **Holliman**. And Judge Roper knew that all that morning he and the Judge had heard motions on this big case which was to go to trial on the following Monday, as I recall; is that not correct?

Ms. **Nixon**. Right.

Mr. **Holliman**. But he did not remember where he was, whether he stayed there that afternoon or not?

Ms. **Nixon**. Yes.

Mr. **Holliman**. And Betty Lou, the secretary, you all checked with her records?

Ms. **Nixon**. Yes.

Mr. **Holliman**. She did not have anything, is that correct?

Ms. **Nixon**. Right.

Mr. **Holliman**. You then checked to see if he had come through Hattiesburg, if you come north from Biloxi up Highway 49 to Hattiesburg, if you go to any of the areas up there where the Judge hunts—he is a big hunter, isn't he?

Ms. **Nixon**. Right.

Mr. **Holliman**. In any of those areas that he hunts, you go through Hattiesburg, don't you?

Ms. **Nixon**. Right.

Mr. **Holliman**. So you thought—you tried to make some calls to determine whether or not he could have gone through Hattiesburg and gone hunting. And you called some people that you all thought of at the time, is that right?

Ms. **Nixon**. That's right.

Mr. **Holliman**. And you couldn't develop anything.

Ms. **Nixon**. Right.

Mr. **Holliman**. Now, of course, you knew he had come to Hattiesburg to the dentist from time to time?

Ms. **Nixon**. Yes.

Mr. **Holliman**. It also then occurred to you this was about—what is your little daughter's name?

Ms. **Nixon**. Courtney Kathleen.

Mr. **Holliman**. And this was about time for graduation?

Ms. **Nixon**. Yes, from the Montessori School.

Mr. **Holliman**. All right, from a little school where she was attending. You and the Judge generally go to those affairs, don't you?

Ms. **Nixon**. Always.

Mr. **Holliman**. All right. So you decided to call that school and check and see if on that date there had been some sort of event at the school. That would place the Judge between the time he got out of court in the morning and put him in Ocean Springs in the afternoon; but you weren't successful with that?

Ms. **Nixon**. Right.

Mr. **Holliman**. So during this time, why did it not occur to you that he might have had a dental appointment?

Ms. **Nixon**. For the reason I said. He even said that in his statement at trial, that the only reason he would go up there for the day would be for a dentist appointment.

And it never even entered our mind, because we knew that the Government had the dental records from Dr. York.

Mr. **Holliman**. You knew at that time that the Government had already gone in and gotten the doctor's records, which showed when the Judge was there and what kind of work was done and all that.

Ms. **Nixon**. Right.

Mr. **Holliman**. So everybody wouldn't be scurrying around looking for May 14th, 1982, if they had that record, would they?

Ms. **Nixon**. Right.

Mr. **Holliman**. You knew that he kept appointment books and all that?

Ms. **Nixon**. Right.

Mr. **Holliman**. So you didn't call him? All right. Now, then, upon reflection, and from the conclusion that you all were able to reach—was that a conclusion reached between you and Judge Nixon that he was in Biloxi on that day and did not come to Hattiesburg?

Ms. **Nixon**. Oh, yes, by everything we went through.

Mr. **Holliman**. Did you find anything to the contrary at that point?

Ms. **Nixon**. Nothing.

Mr. **Holliman**. Now, later on, when it appeared that the Government had the records—which came up after the trial was over, didn't they?

Ms. **Nixon**. Right.

Mr. **Holliman**. And after your husband had been convicted, the records showed up showing that he had in fact gone and gotten some medication from the doctor that afternoon in Hattiesburg, didn't he, on May 14th, 1982?

Ms. **Nixon**. Right.

Mr. **Holliman**. And then what did you recall about the dental appointment?

Ms. **Nixon**. Well, I remembered that the week before we had been at the judicial conference in San Antonio. He had a lot of pain in his jaw, and we had called Judge Speers, and his secretary had gotten him a dental appointment up there.

Mr. **Holliman**. Were you with him in San Antonio the week before the judicial conference?

Ms. **Nixon**. Yes, we were there together.

Mr. **Holliman**. You go to see the dentist there?

Ms. **Nixon**. He went to see the dentist. And he gave him a prescription for it, and told him to see his dentist when he got back home, orthodontist, because it was out of line, something, and he would have to——

Mr. **Holliman**. Then you remembered that the first time——

Ms. **Nixon**. Then we remembered that for the first time. You know, we hadn't even thought about the conference. You know, we knew the conference was before when we found out about the 14th, but didn't come together mainly because I guess—I don't know.

Mr. **Holliman**. All right. But on the date that this came up in the middle of the trial, when your husband testified, after you all did all this work—were the lawyers helping you and everybody helping you trying to find out this information?

When he testified that he was not in Hattiesburg for one minute or whatever that afternoon—when he testified to that—were both of you, and those and his secretary and everybody who had made this investigation, were all of you of the honest belief that that was an honest answer on his part?

Ms. **Nixon**. Oh, yes, definitely.

Mr. **Holliman**. No further questions, thank you, Mr. Chairman and members of the committee.

Mr. **Edwards**. Thank you very much, Mrs. Nixon. The subcommittee will recess until 1:30 this afternoon.

[Whereupon, at 12:00 noon, a luncheon recess was taken.]

AFTERNOON SESSION

Mr. **Edwards**. The subcommittee will come to order.

Mr. Stewart, you are recognized for your statement.

Mr. **Stewart**. Thank you.

Before I get underway, I wanted to first just tender as part of the record the memoranda we had previously submitted on Tuesday, there were two of them, a memorandum concerning the truthfulness of Judge Nixon's Grand Jury testimony of July 18, 1984; a memorandum that's dated June 7th, and also memorandum concerning this subcommittee's duty to investigate whether Judge Nixon was targeted for investigation because of the Petit Bois Island case.

Mr. **Edwards**. Without objection, it will be made part of the file.

Mr. **Stewart**. Thank you, sir.

I have been privileged to be here the last couple of days representing Judge Nixon, privileged, even though the circumstances really are somewhat grim for Judge Nixon because of the constitutional importance of this occasion and the seriousness with which the subcommittee has approached it.

But also I've been privileged to represent Judge Nixon as a person. He's a fine gentleman, been an excellent judge for 20 years, serving since 1968. And I have been honored to be his lawyer. But it's also been a privilege because I've had a chance—or I have a chance now to try to right a wrong, to correct an injustice. He has been unfairly convicted and unjustly taken from his family and placed in prison.

We have an unusual opportunity here because the Constitution places such a high value on the independence of the Federal Judiciary to establish what I believe you will conclude, when you've had a chance to study the full record in this case, that he's committed no crime and has engaged in no impeachable offense.

I also want to note, just at the outset, that I surely understand the subcommittee's disappointment that Judge Nixon was unable to testify here. I take responsibility for that decision. We had only a couple of weeks notice of the actual hearing date. He's in difficult circumstances now for preparing properly, and we had a lot of things to do.

I think you could even see with Mr. Weingarten's testimony in the last couple of days, and I don't mean to impugn any of his motives, he was trying to give clear testimony, a lot of times he just didn't remember particular parts of the record, and he had to say I'll accept your representation or whatever.

I think it would have been very difficult for Judge Nixon to try to give an answer like that and, without real study, he would have been unable really adequately to respond to the questions the subcommittee reasonably has.

I also want to repeat, at the risk of becoming tiresome, though we have pointed out in several of the memoranda we've submitted, that Congress, under the Constitution, cannot exercise its impeachment power solely by relying on the judicial decision. That was decided by the Senate, I think, in the Harry Claiborne case, and the impeachment article that was based on the conviction was rejected.

I think Congress has to conduct its own investigation and evaluation of the evidence, make its own independent judgment as to whether that evidence justifies impeachment. And I want to emphasize the materials we've submitted, in particular the affidavits and declarations that are Exhibits N-24 through N-30, I questioned Mr. Weingarten about a number of them. I think there's very significant material in those statements.

But I also need not to be unreasonably sunny about this and say you can just forget the convictions. We have to recognize those convictions are there, and that even if you do not accept them automatically, which I'm sure you won't, that there's something we have to confront and deal with. And that's why we have made a point in these proceedings that you have to look at how those convictions were obtained. That's why that's relevant, how the Government conducted itself, what was the Government doing.

We absolutely have been trying to abide by the subcommittee's stricture that we address primarily the evidence concerning Judge Nixon's conduct. But we also have to deal with those convictions and we have to show you how those convictions happened. And because of that, I think the subcommittee just has to appreciate that, at the beginning of this decade, there was a fever abroad in the Public Integrity Section of the Justice Department. The fever was to convict a Federal Judge.

I think the Judiciary Committee generally has seen that fever, not just here. You might even call it in this case "Big Prize" fever. And one of the earliest victims of that fever in this case was balanced judgment and fairness.

Skip Jarvis came in with a lot of wild accusations, sounded like some horrible stuff happening. They wired him up, they started running around Mississippi, and nobody really sat down and thought have we got anything here? Because when they finally did that, a year later, they found out they almost didn't have anything.

For reasons we do not fully understand to this day, Judge Nixon did become the target for the Public Integrity Section. He became the big prize. A number of people stood between the Public Integrity Section and Judge Nixon, Wiley Fairchild, Bud Holmes, John Stocks, Eugene Lewis, those are the two men involved in the Petit Bois Island case. All four of them got indicted, all four were told they did not have to be indicted if only they could give the prosecutor something on Judge Nixon.

Ultimately, the convictions of Judge Nixon for supposed crimes, that if they were crimes and, of course, we've denied that throughout, they had only been created by the investigation itself. So the final and the biggest victim of this fever has been Walter Nixon.

So where does the case begin? The first investigation begins with Petit Bois Island situation in 1983. That's a land condemnation case the Grand Jury starts up in Tallahassee. We know that Judge Nixon, if not a formal target, and Mr. Weingarten gave a very narrow definition of what a target is, he was surely within the ambit of that investigation.

If you look at Exhibit N-33, the affidavit of David Sanders, one of the former owners of Petit Bois Island, he was interviewed in July of 1983 about Judge Nixon and Petit Bois Island. Why did they pick Judge Nixon? Did he have a command of the case? How did they steer it to Judge Nixon? He obviously think there's something up.

Now, no charges were ever lodged on Petit Bois Island against Judge Nixon. They never found any evidence of wrongdoing.

But we also know that, in the beginning of 1984, an FBI agent tells Joe Denson, a man in Mississippi, after he interviews him about Petit Bois Island, tells him about Judge Nixon, "We're going to get his ass."

In November of 1983, the Jarvis allegations come in about Wiley Fairchild. They come in in a very cloak and dagger kind of way. He comes in with anonymous phone calls. Mr. Weingarten, in his closing argument, described Mr. Jarvis as kind of a James Bond type of guy and I think even here yesterday he made a reference to him as the "World According to Skip Jarvis." He's a pretty unusual fellow. He's got these great allegations of great corruption, and it looks like a terrific case.

So they took these allegations, and they put them together with the Petit Bois Island case. And out of that combination, you get the Hattiesburg Special Grand Jury. That's July of 1984.

And we've urged this subcommittee in our submissions to investigate the connections between those two investigations. We have discovered, and we laid it out for the subcommittee, Skip Jarvis had previously had an involvement with the FBI agent that was in charge of the Petit Bois Island investigation. That was an investigation several years previous in Florida.

Now, we do not have subpoena power. We cannot get into the Government's files and we cannot take the trail any farther than that. But there is something wrong here and we truly, sincerely urge the subcommittee to inquire into it.

The Fairchild investment is where the facts of this proceeding get started. Judge Nixon was looking for an investment in 1979 and 1980, in a number of minor children, school-aged support, looking to provide for them.

Exhibit N–20, and I didn't question Mr. Weingarten about it. He had no particular knowledge of it. But it was a trial exhibit, it reports three other oil and gas investments Judge Nixon made during this time frame, I think they were in 1981, of various success. The Fairchild investment was not some extraordinary event. He was doing what a lot of people in this country do. He was trying to invest his money wisely. And there was nothing wrong with that investment. There's never been a suggestion that Wiley Fairchild had some case before Judge Nixon or Carroll Ingram did. There was no shakedown here. A judge, just like a Congressman, can have an investment.

In fact, there's no evidence that there ever was any payoff. That's what Mr. Weingarten has conceded. They never did prove anything that was done by Judge Nixon or Wiley Fairchild, or that was even asked to be done.

When the investment is agreed to, it takes awhile to have it finally completed. The paperwork is slow. Judge Nixon testified at trial he was puzzled why it took so long but he just waited. He didn't want to be too importunate to Mr. Fairchild or Mr. Ingram. And the papers came through in early 1981.

A couple of features of the investment have attracted a lot of attention. The documents were backdated to reflect the actual date of the agreement. And I covered that again this morning. Everybody agrees why they were backdated. Everybody who was there. Carroll Ingram said they were backdated to show the true date of the agreement. That's what Judge Nixon says, that's what Wiley Fairchild says. There was no nefarious purpose. Backdating is common in oil and gas investments.

There were four witnesses, three of them Government witnesses, who testified to that, including Skip Jarvis, backdating is common in oil and gas investments. It's not a badge of fraud here.

Wiley Fairchild also took a note back for the investment. That was a surprise to Judge Nixon. He testified about that. He had intended to take out a loan. That's what he did for his other investments that are included in Exhibit N–20.

But also Wiley Fairchild got a very good return on that investment that he sold. That was not a giveaway. It turned out very well for Judge Nixon, it's true. Two of the wells performed well; one did not perform well. Well, Wiley Fairchild made many, many,

many times his money, his investment, when he sold those interests to Judge Nixon.

There's no misconduct anywhere until this point. I'm now in roughly 1981, in the middle, and here you do find some misconduct, and it's Bud Holmes. The Drew Fairchild case has come up, cases. Drew makes his deal up in Jackson with the Federal prosecutor, a case that apparently the U.S. Attorney says he became convinced Drew was not cooperating, but he doesn't do anything about it, he just sits there for six or seven months. Nothing happens. He's got a deal, dated November of 1980, it's the summer of 1981, and nothing has happened. What is the Federal prosecutor doing? That's a question we've never gotten an answer to.

So Bud Holmes calls up, and we know why Bud Holmes called up. He called up because he was trying to collect Bill Porter's fee. That's an extraordinary admission for Mr. Holmes to have made, but he made no bones about it at trial.

There's at least three points in his testimony he said that was his primary motive, recover Bill Porter's fee. And I think he said he told the U.S. Attorney that too who, actually it turns out, was his friend from Hattiesburg.

So Bud Holmes indicts the case and Wiley pays the fee on the same day that Drew Fairchild's arraigned. I need to stop here and emphasize something. Who was Bud Holmes acting for? Who was he doing a favor when he did that? He was doing a favor for Bill Porter, his friend. Bill Porter is the guy who said I'm trying to collect my fee, and Bud said, OK, I'll indict him, we'll get your fee. Bill Porter's the guy he's helping. Judge Nixon is nowhere in the picture.

Drew Fairchild reaches a plea bargain with Bud Holmes that's essentially the same as the Federal agreement. I believe there was a difference in the fine that was to be paid. And he enters a guilty plea in State Court in January of 1982.

About 11 months later, Bud Holmes passes Drew's case to the files. Now, that's a State Court procedure, and it's unusual to Mississippi, in my experience. It has no actual legal significance. The case remains alive, but the testimony is quite clear that, as a practical matter, it usually does have significance, the case kind of slips away into the ether. Most cases that get pass to the file don't come back.

Now, Holmes testified that the big motivating thing behind his decision to pass the case to the files—and this is at 754 of the transcript—was that a new judge was about to take office, the State Circuit Judge in Forest County. And Bill Porter came in and was fussing about it, and said, "This new judge, Dickey McKenzie, he's not going to live up to the plea bargain. We can't count on him. We've got to do something here. We've got to do something about Drew's case."

So, because Bill Porter asks him to do something right there in December of 1982, he passes the case to the files.

Now, Holmes did testify that another reason he passed the case to the files was that he had promised Wiley Fairchild to do so. Now, I'm going to come back to that in a minute.

But Bud Holmes never said that Judge Nixon asked him to pass the case to the files or that he passed the case to the files for Judge Nixon. That's nowhere in the testimony.

Drew's case didn't stay in the files very long. And I refer to him as Drew and his father as Wiley only because it's simpler. I don't mean any disrespect.

The pilot who had been the fugitive from the marijuana scheme and who was a very slippery character, he ducked extradition a couple of times, was being extradited from Florida. The newspapers made a big fuss about it, about the fact that the case had been passed to the files suggested there had been favoritism, or at least that was the talk on the street in Hattiesburg. So Bud Holmes brought the case right back into the active files.

I want to talk about the conversations, blackmail conversation between Wiley and Judge Nixon at Wiley Fairchild's office, and the conversation between Judge Nixon and Bud Holmes at Bud Holmes' farm.

It's important to focus on the fact that every allegation of wrongdoing on the two convictions of Judge Nixon concern those conversations, those two conversations on that single day. That's the entire reason we're here. If it wasn't for them, I don't believe the Judicial Conference would have sent this case over here, I don't believe this subcommittee would have found it worthy of inquiry.

There surely is some conflicting testimony on some of the facts surrounding those conversations, how somebody got to the farm; who was with who when they came to Bud Holmes' office, if they came to Bud Holmes' office. But I want to focus first on the uncontested, undisputed facts because there are some. I think it's helpful to take those first.

Judge Nixon visited Wiley Fairchild's office in the afternoon. Wiley told him that Bud Holmes, and maybe Carroll Ingram, were blackmailing him. The judge was very surprised by this allegation, but he did not really respond. Now, there is no dispute between Wiley Fairchild and Judge Nixon on that testimony, on that description of what happened.

Now, Judge Nixon traveled to Bud Holmes' farm later that evening, and he mentioned the previous conversation with Wiley to Bud Holmes. There is no dispute on that.

In addition, the two of them spoke on the telephone with Wiley Fairchild that evening. No dispute on that.

When Mr. Weingarten was asked the question by Congressman DeWine as to what the conflicting testimony was that was significant about this, I was very interested that his answer was, "Well, the big conflicting testimony was about what date did it happen," and we've reviewed that ad nauseam, I'm afraid, and also who dialed the phone, who called Wiley? Was it Bud who placed the call or was it Judge Nixon who placed the call?

Now, we've addressed those, and I'm going to have to talk about them some. But I want to emphasize right here that what this subcommittee has to look at is the substance of the conversations, what was said, what was understood.

Judge Nixon's testimony—and the basic testimony is at pages 1539 to 41 of the transcript—was that he recalled telling Holmes about Wiley's blackmail allegation, and that is concerned Wiley's son. Bud Holmes replied that Wiley was paranoid and that the matter had been worked out.

Judge Nixon recalled that Mr. Holmes unexpectedly handed him the telephone with Wiley on the other end just a few minutes later. The story about Judge Holmes—excuse me, Bud Holmes and the telephone is kind of a theme through the trial transcript. He's on the phone all the time. Everybody says he's sometimes on two phones at once. He has a conversation, and he takes three or four calls in the middle of it.

When the judge spoke on the phone with Wiley, Mr. Fairchild said that he was glad that Judge Nixon had mentioned the matter to Bud. No dispute on that. He had mentioned the matter to Bud, to blackmail him, and that Wiley was satisfied.

Now, Bud Holmes' recollection is a little different. He recalled that Judge Nixon, after telling him that he did not want Holmes to do anything wrong or against his oath—that's a funny way to start a conversation. Do you think somebody said that? Well, he said that Wiley had asked him to put in a good word for Drew. Holmes responded that the deal was set for Drew, it was all taken care of. Well, that tracks what Judge Nixon remembered.

Holmes recalled that Judge Nixon then called Wiley and told him about the plea bargain. It doesn't track exactly, but I'm not sure that's a crime. I'm not sure there's anything peculiar or even noteworthy about that.

Now, Holmes then says he got on the phone, and he promised Wiley to pass Drew's case to the file. Now, we've got a problem with that. He didn't pass the case to the file for seven months afterwards. He says he thinks the call was in May of 1982. He passed the case to the files when Bill Porter shows up. And here's where the subcommittee has to ask what Mr. Weingarten recognized in terms of his skepticism about Bud Holmes, and the problem with puffing by cooperating witnesses.

This sounds like kind of a flourish here, a little something thrown in. And Wiley Fairchild did not recall that Bud Holmes ever told him that he was going to pass the case to the files. Wiley gave that testimony at page 663. He flatly denied that Bud Holmes told him that.

Now, we're seeing the same events through different eyes and it is a little bit different. But I think the keypoint to come to from all of the versions is that the conversations, the exchanges were not substantive. Nobody sat down and said, "What are we going to do about Drew? Well, this boy's got himself in a terrible mess. Let's fix it up."

Judge Nixon reported to Bud, Wiley's upset about something—I'm paraphrasing here obviously. And Bud Holmes replied that Wiley had nothing to be upset about. The plea bargain was made and was going to be respected.

Wiley and Judge Nixon agree that the only subject of their conversation had been Holmes' blackmail, and that's an important point. They agree on that. And then Judge Nixon goes out to Bud Holmes' farm, and then he is supposed to have started telling this whole story about "Wiley asked me to put in a good word for him." That doesn't fit. That's not a reasonable response to what Wiley and he talked about.

I want to emphasize also Exhibit N-26. It's Bud Holmes' declaration. He signed it on February 29th of this year. He states very clearly in that declaration that he did not understand Judge Nixon to be seeking to influence Holmes' treatment of the Drew Fairchild case, and that Judge Nixon did not influence anything his office did in connection with that case. It's a very important document.

At the time he signed that, the Government had no hammer over him. He was no longer a cooperating Government witness. And it undercuts totally any allegation of misconduct by Judge Nixon. It surely undercuts Count 4 of the indictment totally.

And again this situation brings into focus for the subcommittee what I think is going to be a big problem when you try to figure out what to do here. It is the problem of Bud Holmes. What do you make of Bud Holmes? Every time he went to the Grand Jury, he said something that got himself indicted for perjury, every time. He went three for three until he had his deal with the Public Integrity Section. At that point, all of a sudden, Mr. Weingarten is persuaded he's telling the truth, everything he says is true, it's OK.

He does stop getting indicted for perjury, although Mr. Weingarten admits he's still pretty skeptical of this man, and I think the subcommittee has to be pretty skeptical too, especially when his versions don't make sense, when they don't fit with other things.

You have to ask yourself were the prosecutors—did they have such a mindset that they were unable to see that this guy just was trying to get out of his problem by telling the minimum. He didn't say anything really terrible about Judge Nixon, but the minimum to get himself out of his problem.

Can you believe his description of what went on? I don't think so.

I do have to cover how the investigation went. I think you have to walk in the path of the prosecutors for a few minutes, and you have to observe some of the carnage along the way. Mr. Jarvis' phone call starts the inquiries—that's late 1983 and early 1984—they're following up on it. And then Wiley, for whatever reason, and it's in Exhibit N-1, an FBI 302 report, Wiley sends John Baltar, who's kind of his Man Friday, sends him to the FBI and says start an investigation. I'm being blackmailed by Judge [sic] Holmes. It is a fixed idea in his mind that Bud Holmes is blackmailing him. And in April of 1984 he makes the allegation again. The FBI is only too glad to investigate because they've been trying to figure out how to start this investigation anyway.

And the total focus of the Fairchild part of the investigation—Mr. Weingarten was clear about this—is, one, whether that investment was a sweetheart deal, that's his phrase, and, two, how did Drew's case get steered from Federal Court into State Court? That was Jarvis' accusation. You can read it in the transcript of his anonymous phone calls. It's Exhibits N-5 and N-6. That's what Jarvis was told—I'm sorry, I misspoke. That's what Judge Nixon was told when he was interviewed, that interview transcript.

And I'd like to take just a second, it's Exhibit 22. You heard the testimony on tape yesterday—you wouldn't believe how long I prepared. Pages 28 and 29.

When he first starts talking about it with Mr. Weingarten, Mr. Weingarten says, "I tell you that the airport bust was August 1980.

It originally was a Federal case. Got passed to Holmes. Judge Nixon asked how did it get passed, what happened?"

Over on page 29, the answer, "Frankly, that's a very good question, and it's quite what we're looking at here, it's an important issue."

And when you come up again, page 44 it comes back, at the bottom of that, talking about Drew's case. Judge Nixon says, "Oh, he was never indicted." Mr. Weingarten, "He was never indicted federally." Judge Nixon, "That's what I'm talking about." Weingarten, "The case got transferred to the DA's office in Hattiesburg. He was indicted." Judge Nixon, "Well, it was never presented to the Federal Grand Jury. Right. Well, that's what I asked awhile ago." Judge Nixon asked, "Was it ever presented? I meant the Federal Grand Jury."

Next page. "Obviously he said he was indicted by the State." Mr. Weingarten, "It was never presented federally."

And then on the next page, at the top, Judge Nixon asked, "When was—was it transferred to the State? I mean when was it presented to the State or when was he indicted?"

Further down the page, Judge Nixon says, "And it was in the Federal system when originally when did"—there's a great focus here on how did the case get to State Court. That's what Jarvis had accused him of doing. There was nothing to that allegation. It was never carried through into charges.

And Judge Nixon's meeting with the prosecutor, he's talking openly, he does not recall discussing the case with Bud Holmes.

The Grand Jury is impaneled. Judge Nixon still has it in mind, very reasonably in mind on this exchange—in fact, Mr. Weingarten confirms this is what he was asking about, and it focuses on the allegation that he had steered Drew's case into State Court.

Exhibit 23, the transcript of his Grand Jury testimony, I submit, probably is the most important document in this record. I have to urge you to study it. You're going to have to read it, and reread it probably, to have a full understanding of what was going on.

He did appear voluntarily. And I tell you candidly, although Judge Nixon is my client, he was not an easy witness in front of the Grand Jury. He was angry. You heard it yesterday, you heard it in this room. He lectured the prosecutor on Federal law. He kind of wagged his finger at him. And, at the end, he's clearly angry.

But I want to emphasize, when he gives that last speech, I want to emphasize what he's not. He's not a calculating witness. He's not there carefully gauging his questions and answers. He's not saying he can't remember things or getting vague. He's trying to answer the questions as best he can.

I do need to draw your attention to that final speech to the Grand Jury, which was charged as Count 4 of the indictment. Candidly again, that speech is a lawyer's nightmare. The question was, "Do you have anything to add?" He could have left the room. That would have been a wonderful thing to do, but he did not. He was very angry and he had something to get off his chest. And he spoke his mind.

At page 77, there is a very, I'm afraid, and I really have to say it, a very moving passage. He speaks of his resentment over the attack on his personal integrity and reputation, and he says, and I quote, "It takes a lot of control not to say it stronger."

I'm not sure you could appreciate it on the tape because it was poor tape quality, and Judge Nixon is a very soft-spoken man. But those of us who know him could feel that anger in that tape. It's honest anger, and his testimony is honest. He is not testifying like a man with something to hide.

OK. Then the indictment—I'm sorry—the investigation proceeds. Wiley makes his deal after the indictment. I'm not going to go through every detail here. I'm taking a lot of time as it is, I know.

His deal guarantees that the Government will ask for no jail time. What does Wiley do? A couple of remarkable things. First, he goes into the Grand Jury and makes some outlandish allegations, allegations that even Bud Holmes says are just out and out lies. He says that Judge Nixon, through Bud Holmes, got a $10,000 bribe to fix the Shows case when he hadn't had anything to do with the Shows case, which everybody knew at the time Wiley gave the testimony. Then he says that Bud Holmes conspired to—or had some involvement in the drowning death of Bill Porter, his friend.

Remember what Mr. Weingarten said about the danger of a cooperating Government witness who puffs or curries favor.

But the second thing that happens is Wiley Fairchild and the prosecutors have an extraordinary series of interactions, winks and nods and promises, will you get me a pardon, will you help me with a pardon, will you drop the charges, will you get rid of the charges? Wiley—and it's clear from his trial testimony, read it, the man is speaking honestly, I think, he doesn't think he did anything wrong. He pled guilty. He made a terribly mistake pleading guilty. The charges against him were not substantive, not well-founded. But he's told by the prosecutors if he can give them something on Judge Nixon, he can have a deal. They tell him they might drop the gratuity counts. They tell him they'll help Drew, and then they help Drew. Talk about an executive pardon, and they make it clear that if there's going to be a pardon, it's going to go through Mr. Weingarten.

And Wiley sends his right-hand man, Mr. Baltar, to help the Government pick the jury. Now, Mr. Weingarten says it doesn't matter if Mr. Baltar—is somewhat dismissive of Mr. Baltar, but that's a peculiar thing to do, to have a key Government witness to send one of his employees to help the Government pick the jury.

And then, when it was all over, when Wiley thought he'd been a good fellow and the Government was going to reward him, he asked John Baltar, he said, "Call up Mr. Weingarten," and this is in Mr. Baltar's affidavit, Exhibit N-26, "Call up Mr. Weingarten and get my pardon."

Mr. Weingarten says, "No, no. I'll be happy to help do whatever I can, but I can't do it while the Nixon case is still alive."

And none of this was disclosed to Judge Nixon. None of these relationships with Wiley Fairchild. And I think they were important, the symbiotic relationship that developed, both to establish what Wiley Fairchild was doing and also what the prosecution was doing. This was a perjury case. What was at issue was credibility, Government's credibility and Judge Nixon's credibility.

The Government got off easy here on its credibility especially since, in his closing argument, the prosecutor says, in an extraordinary passage, "We gave up our leverage on Wiley Fairchild. We have no leverage on Wiley Fairchild." And Wiley, three days later, has John Baltar call up and say, "Where's my pardon?" He had lots of leverage on Wiley Fairchild.

One of the strangest chapters in this case is then what happens to Drew Fairchild. Judge Nixon was excoriated at trial by the prosecutor. A U.S. District Judge helping a drug smuggler. My heavens, this is an outrage. The prosecutor used the harshest terms to describe that. But it's the Federal prosecutor who saves Drew's tail.

Mr. Weingarten said there was something screwy about Drew's case, and there was, and it was what Mr. Weingarten did. The State judge announces he's not going to accept Drew's plea bargain and he's thinking about giving him the maximum prison term, five years in jail. While his co-defendant, a guy named Bob Royals, who Mr. Weingarten referred to—I'm sorry, Drew's co-defendant, I think I misspoke, was ultimately prosecuted and got several years in jail. I'm not sure that the threatened State sentence was so outrageous.

The Federal prosecutor then writes a letter on Drew's behalf, and Drew's lawyer gets a bright idea. Maybe I can get a shorter Federal sentence. I'll use the Federal Government to protect me against the State. And he's got a Mississippi Code statute. It says you can block a State prosecution if you've got a Federal prosecution for the same acts.

So he calls up Mr. Weingarten, and he makes it clear that they will plead guilty if he's indicted federally. He's playing the Federal and State Governments off against each other. Mr. Weingarten, who has promised to Wiley Fairchild that he will see that his son is treated fairly, is willing to play. He indicts Drew and he sees the matter through to a six-month prison term, and the State Court sentence fades away. It's gone.

What is going on here? The Federal Government is moving heaven and earth to get the big prize, the judge who, at the very least, committed no crime until these investigations started. And one of the steps on the way to that prize is making sure that this drug smuggler doesn't get too long a sentence. We submit that's big prize fever that's taken hold. The prosecutors have lost their bearings.

And then we come back to Bud Holmes, the Bud Holmes problem. He was very nervous throughout this investigation. After his Grand Jury appearance in July, he asked Carroll Ingram whether Wiley Fairchild had taped the phone call from the farm. Now he tries to lay that off on Judge Nixon. He says he was asking for Judge Nixon. But he says he asked for Judge Nixon in April, and Carroll Ingram says he asked in July. It doesn't fit. Carroll Ingram says it didn't sound like he was asking for somebody else

And then an extraordinary episode happens which Mr. Weingarten didn't mention. It's in the testimony of Katie Matison. She was Assistant District Attorney who had responsibility for the Drew Fairchild case in the Forest County DA's office. Pages 1348 to 58 of her testimony in the transcript. She says Bud Holmes, beginning in the summer of 1985 —no, 1984, excuse me, summer of 1984, began to call her, say you made the decision to pass Drew's case to the file. It was your decision. You ought to take responsibility for it. He's trying to lay it off on her. He's trying to get out from under. He's not protecting Judge Nixon; he's not protecting anybody but Bud Holmes. And he keeps doing that.

And then, in February of 1985, he comes by her office, and he starts getting—oh, boy, I can't remember the terms. He calls her an ingrate, and he starts getting very—a little abusive she said. He's still trying to get her to take responsibility, and she won't do it.

So then he goes to see Carroll Ingram. Carroll Ingram's just told the Government about, you know, he had some recollection of hearing about the phone call from the farm. So he goes to see Carroll Ingram. Carroll Ingram confirms it. Yes, I told them about what I know.

And he goes back to see Carroll Ingram, and he says are you sure? He's trying to get Carroll Ingram to recant. And he tracks down Judge Nixon and asks him down to the courthouse parking lot, tries to tell him about his concern about the phone call. Now, who's running in circles here, who's got the problem? Is it Judge Nixon who's got the problem or is it Bud Holmes who's got the problem?

In March of 1985, Bud Holmes is invited to see the Federal prosecutors two days before he's supposed to be indicted. He's told that if he can give them something on Judge Nixon, he need not be indicted. He's a savvy guy. He ought to be able to figure that out. And, sure enough, he probably has. But he doesn't know anything crooked about Judge Nixon. He says that in his declaration of this here that we've submitted as an exhibit. So he can't make a deal.

So they go in, and they start picking a jury. And then I submit the Government gets very nervous. They've got a lousy case against Bud Holmes. He is the only way they can even hope to build a case against Judge Nixon. And they've got to cut a deal. So they cut a deal. And it's not much of a deal from the Government's point of view. They give up five felony counts, and they take a contempt charge. And the contempt charge is so botched that even though the judge tries to sentence Bud Holmes to a year in jail, he does it wrong, and the jail sentence is voided. Bud Holmes walks away.

If Bud Holmes is such a desperado here, the Government's got him under five counts. Perjury, he's got no respect for the oath. Why are they making that deal?

Then we do come to Judge Nixon's indictment. I want to talk quickly about the first two counts of the indictment, even though he was acquitted on them, because I think what you've heard here, and I have to be candid, I think Mr. Weingarten was a lot more of an advocate than a fact witness here today and yesterday. He made a strong effort to try to indict Judge Nixon on Count 1 again, the gratuity count.

But talking quickly about Count 2. The allegation in Count 2 was perjury, perjury charge that Judge Nixon falsely denied that Wiley Fairchild had asked him to do anything concerning Drew's case. It was a total failure of proof on that. Wiley Fairchild and Judge Nixon both said the only thing they talked about was the blackmail allegations concerning Bud Holmes. The jury acquitted. It had no basis for convicting.

Count 1 requires another couple of minutes to talk about, or maybe a minute. It was the only allegation of substantive crime, the gratuity count. It was the only accusation that Judge Nixon actually had made some money or done something that would look bad. It was an important count for the prosecution to get into the jury room, to really focus them on something that looks wrong. There was a total failure of proof.

Mr. Weingarten admitted a potential future official act, even though inchoate and unknown, would satisfy the statute. The judge didn't instruct the jury on that because that is a very adventuresome version of the law. The Government had to know that count was bad from the beginning.

The prosecutor was telling reporters during the trial that he knew it was no good. That's what the testimony shows that Tom Brennan, the newspaper article I spoke to I mentioned in questioning, and also that's what Mr. Weingarten essentially confirmed, a little roundabout but he essentially confirmed it. And he admitted that he bad-mouthed the evidence as it came in. He needed that Count 1 though for playing for a compromise verdict and to inject a veneer of personal profit.

This is a totally inappropriate and unfair trial tactic. The Government should not bring charges that it does not think it can prove. That is a real basic proposition. It's not complicated, it's not sophisticated. It was not respected here.

All right. Specifically on Count 3. The question and answer, I submit you could read the entire transcript and never notice that question and answer. It is an almost clearly, superficially, innocuous question. "Did Bud Holmes discuss the Drew Fairchild case with you?" Answer, "Not to my recollection."

It's possible to get somewhat scholastic in the dissection of this question and answer here, and I've tried to avoid that. But I do think you have to understand the ambiguities that really are here. And I want to start out just comparing it to a question and answer that Mr. Weingarten gave in his testimony.

He was asked by, I believe Mr. Baron, but I may be wrong, "Did Judge Nixon raise the issue at file concerning the meaning of discussion?" Mr. Weingarten said no.

Then I asked him, "Wait a second. Wasn't there a jury instruction requested? Wasn't that attempted to be argued to the jury?" And he said, "Oh, yeah, of course. I understood the question to mean testimony. I don't think there was testimony about that. But, yes, you're right, there was some of this other stuff."

Well, he misunderstood the question. I'm not saying he intentionally was saying something wrong to the subcommittee. Why can't anybody else do that?

Now, there are at least four questions, four propositions that you have to answer against our position I submit in order to find that Judge Nixon's answer here was an intentional false statement. First, you've got to conclude that the question clearly asked Judge Nixon to disclose every possible exchange with Bud Holmes that had any connection with Drew Fairchild's case, no matter how remote.

Here I need to compare the testimony of Wiley Fairchild and Carroll Ingram. They were asked, in one form of another, "Did you discuss Drew's case?" Wiley was asked, "Did you discuss Drew's case with Judge Nixon?" Carroll Ingram was asked, "Did Judge Nixon discuss Drew's case with you?"

They both said no. Well, they'd talked about blackmailing, and what Carroll Ingram had heard about the phone call from the farm. Those both connected to Drew's case. They had something to do with Drew's case but they weren't discussions of Drew's case. That's what a witness understands the question. The witness takes the question at face value. It's not a passing reference, it's not talking about something that may something to do with the case. It's talking about the case.

I think we have to know that from our common experience, and I think we also know from our common experience that it's not what Mr. Weingarten suggested, which is who talked more?

There was a suggestion there by Mr. Weingarten didn't discuss the case because Judge Nixon discussed it with Carroll Ingram. I submit that it's the Government that's splitting hairs here now. It's got to have substance, there has to be a real exchange. There wasn't ever with Bud Holmes.

I want to use an example here. You can play hypotheticals for a long time, but let me just use one.

Assume that, while having dinner with a constituent, the constituent asks the Congressman to vote against the bill. The Congressman says he doesn't know much about the bill. What's the issue? The constituent says it's a Medicare bill. Everyone's against it in the district.

Two years later—four years later, the Congressman is asked did you ever discuss Medicare policy with that constituent? Did he discuss Medicare policy, did he discuss Medicare with his constituent, did he discuss the bill? Or, under the Weingarten theory, did the other guy discuss it with him?

I think when you think about his answer, when I asked, when you see your partner tomorrow and you say this Nixon case is driving you crazy, is that a discussion? He said yes. That can't be a discussion. That's just not right.

Second, here, you have to conclude that Judge Nixon did not reasonably understand the question to relate to how Drew's case got passed from the Federal prosecutors to the State prosecutors. Our written papers deal with this more fully.

But when you look at Judge Nixon's Grand Jury testimony, the next to last page of Exhibit 23, he really says it there. He says, "Well, wait a second. I thought this was about Drew Fairchild's case. That's the only Federal offense that could be here." The only Federal offense, everybody's agreed, is if he was involved in getting that Federal case moved to State Court. That would be a Federal offense because that would involve an official act. That's what Judge Nixon had in his mind based on his interview. It's entirely reasonable. That's what Mr. Weingarten told them the investigation was about.

And what both of these points highlight is that this question wasn't followed up. It could have been clarified.

I even asked Mr. Weingarten what did he mean by that question, and he couldn't answer it. I don't know if he couldn't remember, he just couldn't say.

I think it's clear from the record that Mr. Weingarten and Judge Nixon, both understood the question to relate to how the case was passed from Federal to State hands. But there came that time in July of 1985, when the prosecutors are combing the record for charges. Jarvis' allegations haven't worked out. Petit Bois hasn't worked out. Nothing's working out. The free dental service care, the Shows accusation. Lord, they have turned Mississippi upside down and they've got nothing. And they find this question and answer.

My third point here is you just take the descriptions of those conversations in the record on that day by both Judge Nixon and Wiley Fairchild. They both say the only topic of conversation was blackmailing. That blackmail allegation grew out of Drew's case but it did not involve discussing the case itself. I just stand on the language.

For you to decide that's not true, you've got to credit Bud Holmes. You've got to say we believe Bud Holmes and we do not believe Judge Nixon and Wiley Fairchild. That's a big leap. I'd be real uncertain about making that leap.

Fourth, even if Bud Holmes is right about what happened at that farm that night, nothing he says contradicts Judge Nixon's testimony. According to Bud Holmes, three things happened that night. The judge says that Wiley asked him to put in a good word for his boy. When it's described by the prosecutors, they always slip that fact that Wiley asked him to put in a good word. They always say Judge Nixon said I want to put in a good word for his boy. That's not what the testimony says. He said Wiley asked me to put in a good word for him. He's passing on the fact that Wiley is anxious. Even assuming Bud is right, Wiley is upset and he's passing on that news. And Bud Holmes, in his declaration, which is an exhibit, says that's what I understood him to be saying. He's telling me that a constituent of mine is upset. And I would expect any friend of mine to tell me that.

Bud responds the case has been settled. It's OK. Don't worry about it. Wiley's paranoid. He thinks everybody's after his money. Well, Bud Holmes and Bill Porter were after his money. Paranoids have enemies too.

And then Bud says, says he says, "Oh, I'll pass the case to the files. I'll take care of it." Now, is that one of Bud's flourishes, one of his puffs for the prosecutor?" Wiley doesn't remember it. Judge Nixon doesn't remember it. It's not very credible because he doesn't do it for another seven months.

And just take Count 3. When you look at it hard, when you look at it close, it's not there, it's not a false statement.

Count 4 involves the speech at the end of his appearance, statements that were not a response to a question. Those emotional statements were true. But before going through each point, and I'll do it quickly, I want to emphasize that the crux of this allegation in the indictment was that Judge Nixon attempted to influence Bud Holmes in his handling of Drew's case, that he attempted to influence him.

Judge Nixon says that's not true; Bud Holmes says that's not true. I'm a simple-minded person. That should end the matter.

Mr. Weingarten confined all the circumstantial evidence in backdating and grantees in blank and whatever. If the people say it wasn't so, and you can't contradict them, how can you convict somebody on it?

Let's look again at why did he pass the case to the files. And I'm coming back to Bill Porter here. He passed the case to the files for Bill Porter. Just like everything screwy that happened with Drew Fairchild's case was for Bill Porter. He indicts Drew to get Bill Porter's fee, takes the case from the Federal Government. He sends the case to the files for Bill Porter. He says that's what he's doing it.

And after Porter dies, he drowns in November of 1983, or maybe October, there's an extraordinary episode that hasn't been discussed here, it's not directly relevant, but it's illustrative.

He goes and gets Judge McKenzie, who is the State Court judge, and he brings him out to Wiley office at seven in the morning. And he says, "Wiley, I just want you to know I'm going to live up to the plea bargain. I'm leaving office soon, my term is up, but I'll live up to it, and I'm saying it here in front of Judge McKenzie.

This is an extraordinary event. And Bud says he's doing it because he wants—he made the promise to Bill Porter and he wanted to make good on that promise to Bill Porter's memory. It's Bill Porter who's motivating Bud Holmes, not Judge Nixon.

OK, let's look at the specific statements in Count 4. Judge Nixon says, "I've had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in Federal Court or State Court."

False statements have to be proved specifically. That's hornbook law. Incontestably, he did not have anything to do with that case in State Court or in Federal Court. He was not involved in that case in State Court or Federal Court. It was not an intentional misrepresentation.

After discussing which Federal Judge handled the case, whether it was Judge Cox or Judge Russell, he goes through that, he said, "I never handled any part of it. Never had a thing to do with it at all." Well, of course not. The cases weren't before him. That's what he's saying there. The Government underline that in their indictment and says this is a lie. It's incontestably true.

And the final statement, which is the one they really do hang the charge on, that he never talked to anyone, State or Federal, prosecutor or judge, in any way to influence anybody with respect to this case. There are not witnesses to the contrary. The objective evidence, Wiley's testimony and Judge Nixon's testimony, said all they discussed were the blackmail allegations. The testimony was plainly true.

I need to spend a couple of minutes on the issue of the dating of these conversations and the phone call.

There's no dispute that the date is disputed. Mr. Weingarten was straightforward about that. Nobody really knows when it was. Wiley Fairchild put it in at least three different time periods. First, he put it in a place where it ought to be the middle of 1981, before Drew's indictment. Then he says it was the tidal wave of publicity in 1983. It really wasn't a tidal wave. A couple of articles. But Wiley's very sensitive to that. And he agreed it was probably in early 1983. And he said, no, no, it was before the case was passed to the files.

Bud Holmes said it was probably May 14, 1982, and he based it on a calendar entry of May 13, and he also dated it by a couple of events, dust up in a bar, a wedding. But he said he wasn't sure. He was very straightforward about that. He said I really can't be sure.

And if it was May, and I've said this a couple of times, but it really is an element that doesn't fit. He waited seven months to pass the case to the files. That's a very peculiar response to something that's supposedly influenced him. I mean, wasn't he concerned that Judge Nixon and Wiley would get impatient. According to the Government's theory, they're supposed to do something now, fix it up, fix this case. That's not what happened.

Carroll Ingram was straightforward about it. He said he really wasn't sure, but he thought it was in the fall of 1982 that he heard about it. Judge Nixon dates it in March of 1983. His testimony sounds a little like Bud Holmes to the extent that he associates it with other events, his wife's periodontal surgery, his payment of the notes to Wiley Fairchild. That has a ring of truth. He said he paid off the notes and he gave Wiley a call. Makes sense. Wiley asked him out to the office.

Now, we were advised on Friday for the first time, last Friday, that the question of Judge Nixon's trial testimony on this issue was under consideration as a possible impeachment article. We've been very troubled at the short notice we've had of this, and we tried to respond to it.

The issue, as we see it, and it's never been formally articulated, would be whether it was an intentional false statement for Judge Nixon to testify at trial that he had not been in Hattiesburg on May 14. We presented Mrs. Nixon on this issue this morning. I think she made clear what happened.

Judge Nixon knew that Dr. York, the dentist, had had his files produced or seized by the FBI. When they learned that May 14 was a possibly significant date, they tried to figure out where the judge was on that date. They knew he was in Biloxi in the morning. He thought he was in Biloxi in the afternoon. But this was a perjury case. You've got to be careful. I have to admit that's why Judge Nixon can't testify here today. We have to be extremely careful. Inadvertent mistakes are not overlooked in a perjury case.

So they called around. They called a lot of people. They called their daughter's school, they called hunting friends because, when he went hunting, he tended to go through Hattiesburg. They called relatives, they called the periodontist up in Hattiesburg. They didn't call Dr. York because they figured the Government would have produced those records. That was a reasonable conclusion under Rule 16. Those records were material. Mr. Weingarten agreed with me this morning those records were material.

Had he had them in mind, they should have been produced. He says he didn't have them in mind. I'm sure he didn't. Those records would have helped him. I can't dispute that. But they weren't produced. They reflected the whereabouts of the defendant at the time chosen by the key witness for the Government for the key event in the case.

Now, Judge Nixon testified absolutely and honestly on the basis of his best recollection and memory that he had not been in Hattiesburg that day. He also testified that, on occasion, he went to Hattiesburg for the day to see the dentist. The Government never contradicted him or presented other records. I think we all appreciate that it's virtually impossible to remember where you were on a specific date four years ago, except perhaps Christmas and birthdays. You have to look at records and try to make your best recollection, reconstruct it. He had no recollection of being in Hattiesburg. He checked the records he could find, and thought of to check, and he testified, on the basis of his best recollection.

This episode, I submit, has been blown up all out of proportion. It has the hallmarks of a blunder on both sides. The Government blundered by losing track of the records. They should have produced them. Judge Nixon could have checked with Dr. York. It would have been the extra prudent thing to do. They didn't. But it was surely no more than a blunder.

For this conclusion, I offer the perspective of a trial lawyer looking over the episode. First of all, I think Mr. Weingarten really was clear about this, May 14, 1982 was not the key to his case, it was not the key to the defense case, it just wasn't that important. Nobody knew when the meeting was. Bud Holmes wasn't sure. Wiley was all over the early 1980s. Carroll Ingram wasn't sure. Judge Nixon thought it was 1983. But it was not critical to the defense to prove that he was not in Hattiesburg on that day. And the prosecutor conceded in the post-trial testimony that even if he had been there on that day, it surely did not establish that the phone call happened that day.

And look at the risk that was incurred. Assume that Judge Nixon intentionally lied about going to Hattiesburg that day. He knew they had Dr. York's records. What a fabulous risk to take. They've got those records; he's going to get up there and say he wasn't there when he knows he was there? That would be very effective cross examination. It just doesn't make sense. It was unfortunate. It was a blunder, but it was not an intentional misstatement.

I very much appreciate the subcommittee's patience in the last couple of days. We asked very much for a full and fair consideration of this entire matter. We do stand ready to supplement the record as requested. We would invite this subcommittee to hear from additional witnesses to the extent they think it necessary to evaluate those witnesses. Even more appropriate, we would invite the subcommittee to wait the resolution of our post-conviction motion that's now pending.

I think Judge Nixon put it very well at the beginning though when he noted that most people who hear that there's a Federal judge who's in prison immediately say there's something wrong here. Well, what's wrong is that this judge is in prison, not that he is still a judge.

This subcommittee has it in its power to right a great wrong and to protect the Federal judiciary from the inevitable chilling effect of such a fevered and unfounded prosecution of a Federal judge who has done nothing but serve his country.

We ask for your deepest and most diligent reflection on Resolution 407 because we are convinced that, if you review all the evidence, you will conclude that Walter Nixon should not be impeached.

Thank you.

Mr. EDWARDS. Thank you, Mr. Stewart.

Special Counsel Alan Baron.

Mr. BARON. Thank you, Mr. Chairman.

Mr. Stewart, I understand, of course, that you are not here as a witness. You're appearing as an advocate. But my questions to you will be directed to some of the statements you've made because part I want to understand and I think the subcommittee would like to understand just what it is that you meant in certain of the representations you made.

First of all, you made reference in the course of your presentation to certain other oil and gas investments that Judge Nixon made. And if I understood what you were saying, you were drawing a parallel that they were really—that the deals with Wiley Fairchild were part and parcel of simply the kinds of investments that the judge was making, any of us might try to make in order to make more money.

You referred to your exhibit in your book, N-20. Could you turn to that, please?

Mr. STEWART. Uh-huh. Yes, sir.

Mr. BARON. If I understand what's presented there, those investments look quite different than the ones that Judge Nixon had with Wiley Fairchild.

Look at the one, Patterson Petroleum Corporation. The date of the investment is in May and August of 1981, where Judge Nixon invested $6,250, is that correct? Am I reading that correctly?

Mr. STEWART. That's what's there.

Mr. BARON. It appears in 1981 the income from that investment was zero. Am I correct? Am I reading it correctly?

Mr. STEWART. Yes.

Mr. BARON. Isn't that right there quite different from the Wiley Fairchild investment? Here, Judge Nixon is out of pocket $6,250, and his money is at risk. Indeed, it appears he never recouped it.

Whereas, in the Wiley Fairchild deal, he never had a penny out of his pocket. All the moneys that he used to pay back the obligation came out of the revenues generated by the investment, right out of those wells, is that correct?

Mr. STEWART. No.

Mr. BARON. It's not correct?

Mr. STEWART. No.

Mr. BARON. I believe the testimony is that the——

Mr. STEWART. Can I answer?

Mr. BARON. Yes.

Mr. STEWART. I'd like to explain my answer.

Mr. BARON. Go ahead.

Mr. STEWART. OK. And I'm speaking from my recollection of the testimony here. And I haven't prepared specifically on this point, and I'm subject to correction.

My recollection of the testimony was, and it's in Judge Nixon's testimony, that he borrowed money to make these investments. So, by the same token, he was not out of pocket on these investments any more than with Wiley Fairchild.

Mr. BARON. He borrowed money to make the investments shown at N-20?

Mr. STEWART. I think so.

Mr. BARON. OK.

Mr. STEWART. In addition, if you look at the royalty payments that came in, you pointed out the first year there's no income here, right? The first year, there was no income on the Wiley Fairchild investments either. It took several months, six months, 10 months, before those started to pay off either. That's not unusual in an oil and gas investment.

Mr. BARON. Was Judge Nixon paying back the $6,250 that he borrowed from whatever source, whether it was a bank or whatever, during 1981, or was that deferred until he got royalty payments on his investment?

Mr. STEWART. The record is silent on that. I don't know the answer to that.

Mr. BARON. Is that typically the way a deal is made when you borrow that you don't have to pay it back unless and until you get your royalty payments?

Mr. STEWART. Well, if you look at Judge Nixon's note from Wiley Fairchild, the note said it will be paid, I think it's three years, it's February of 1983. It doesn't have a schedule of payments. So he simply had to pay within three years.

Mr. BARON. Is Chevron USA, Inc. Pointe——

Mr. STEWART. He may have had a similar note for these other investments.

Mr. BARON. Is Chevron USA, Inc. Pointe Coupe, Parish, Louisiana, an investment? February 26, 1981, $9,814.50 is the investment.

How much does Judge Nixon get back in 1981 on that?

Mr. STEWART. It shows nothing.

Mr. BARON. How about 1982?

Mr. STEWART. Same.

Mr. BARON. All right. And you're saying that this is simply the same kind of deal that he had with Wiley Fairchild? Is that your understanding of this?

Mr. STEWART. My understanding is that it's a comparable deal, yes. His testimony was he asked friends for investments. I don't know all the names. I didn't try the case. I think there's man named Pittman who is a friend he got an investment with. There was another fellow, there were several other people he asked for investments.

Mr. BARON. Is it your understand——

Mr. STEWART. Can I finish?

Mr. BARON. Well, go ahead.

Mr. STEWART. Thank you. And that when these investments came in, he went into them blind just like he went into Wiley Fairchild's blind. He knew oil and gas is a gamble.

Wiley's turned out well. Wiley picked good investments for him. Wiley made a good return on them. These other people didn't do so well by him. That was the gamble.

Mr. **Baron**. Are you finished?

Mr. **Stewart**. Yes.

Mr. **Baron**. Is it your understanding that when Judge Nixon—you say he borrowed the $9,814.50 to put into that second deal, that he didn't have to pay anything back during 1981 and 1982 on that loan?

Mr. **Stewart**. The record is silent. I can't answer that question.

Mr. **Baron**. You don't know the answer?

Mr. **Stewart**. I don't know the answer.

Mr. **Baron**. But if he did have to pay something back, that would make it quite a different deal, would it not?

Mr. **Stewart**. I don't want to quibble. I don't think it makes it quite a deal.

Mr. **Baron**. I'm not quibbling.

Mr. **Stewart**. It's surely a difference, yes.

Mr. **Baron**. And in November of 1981, when he invests $10,985 in the Geosouthern Corporation deal, in 1981 he has no return, correct?

Mr. **Stewart**. Yes. Well, 1981 is seven weeks.

Mr. **Baron**. And in 1982?

Mr. **Stewart**. How fast do your investments pay off?

Mr. **Baron**. In 1982, he gets back $2,759 on that deal?

Mr. **Stewart**. Yeah. That one's looking pretty good.

Mr. **Baron**. And do you know whether he repaid—what he had paid back on the loan that you think he made on this?

Mr. **Stewart**. I do not know. It's not clear in the record.

Mr. **Baron**. Now, do you find any ambiguity in the question that was put to Judge Nixon which resulted in Count 4 of the indictment?

Mr. **Stewart**. No, sir.

Mr. **Baron**. That's the one where he said is there anything you'd like to add, right?

Mr. **Stewart**. Correct. I think his answer was influenced by his understanding as to the focus of the investigation, the ambiguity of that situation. But the question itself, no, sir, it was not ambiguous.

Mr. **Baron**. Am I to take it that you disagree with the 5th Circuit when they concluded that there was no ambiguity in the question that was put to Judge Nixon, that is as to whether he ever had a discussion concerning the Drew Fairchild case with Bud Holmes?

Mr. **Stewart**. I absolutely do, and I appreciate the opportunity to comment on that.

That was brought out in the testimony, and I'd like to focus on the 5th Circuit's treatment of it. I have great regard for the courts, of course. But let's look at what the 5th Circuit said because their treatment of this was really peculiar.

They say that this question and answer—well, Judge Nixon must have understood it because later on he said he never talked to anybody, State or Federal, prosecutor or judge, in any way to influence anybody with respect to this case.

So they're taking—that's Count 4. That's 30 pages later in the transcript. The 5th Circuit says, based on something he said 30 pages later means he must have understood the question 30 pages before. Well, that's just not tenable.

Then they go on and say, "The record shows that appellant answered the question without hesitancy, evasion or qualification." Big deal. He misunderstood it maybe. He didn't—there was nothing hesitant or unqualified about his—or qualified about his misunderstanding. It was total.

I don't think the 5th Circuit's treatment of that is in any way persuasive.

Mr. **Baron**. Are you finished?

Mr. **Stewart**. Yes.

Mr. **Baron**. Now, it turned out that when Judge Nixon testified at trial, he had in his mind, did he not, the fact that he had had a conversation with Bud Holmes and the fact that he had been out to the farm and there had been a telephone call to Wiley Fairchild?

Mr. **Stewart**. That was his testimony, yes, sir.

Mr. **Baron**. He knew about that at the time he was interviewed initially by Mr. Weingarten?

Mr. **Stewart**. I don't think the testimony is that clear on that, that he had it in mind at that moment. But he did testify when he was——

Mr. **Baron**. When he was in the Grand Jury?

Mr. **Stewart**. Yes, sir.

Mr. **Baron**. OK. And also when he was interviewed by Mr. Weingarten, not in the Grand Jury but the original interview, he was told, was he not, that what was being investigated was they were looking—I believe the phrase "We're looking at it from top to bottom, from the bust in August 1980 until today," isn't that correct?

Mr. **Stewart**. Sure.

Mr. **Baron**. So he was advised that the scope of the investigation was about as comprehensive as you could get?

Mr. **Stewart**. He was. He was also told what Mr. Weingarten said, which is that the two focuses were whether it was a sweetheart deal and how the case got from Federal hands to State hands.

Mr. **Baron**. And when he went before the Grand Jury, he was sworn, was he not, Judge Nixon?

Mr. **Stewart**. Absolutely.

Mr. **Baron**. And he was sworn to tell the truth, the whole truth, underscore the whole truth, and nothing but the truth?

Mr. **Stewart**. True.

Mr. **Baron**. Would you agree with me with that?

Mr. **Stewart**. Sure.

Mr. **Baron**. That's not empty rhetoric, is it?

Mr. **Stewart**. No, by no means.

Mr. **Baron**. And it's your testimony that when he was asked did you have—not testimony, but it's your position that when he was asked did you ever have a discussion about the Drew Fairchild case with Bud Holmes, having been sworn to tell the truth, the whole truth, and nothing but the truth, and we know that he was aware at that time that he had had that discussion, it wasn't something that had slipped from his mind, it's your position that saying, "No, I don't recollect that, and I'm sure I would recollect if it had happened," or words to that effect, that that is the truth, the whole truth, and nothing but the truth in response to that question?

Mr. STEWART. Absolutely.

Mr. BARON. Now, Judge Nixon, at his trial, when he acknowledged for the first time the phone call—the visit at the farm and the phone call, he wasn't happy with that, was he, he wasn't happy with that situation? He testified that he was disgusted, that he didn't like being used a go-between, do you recall that testimony?

Mr. STEWART. I do.

Mr. BARON. OK. He felt he was being used in some way by Wiley Fairchild, did he not?

Mr. STEWART. The term used, I just don't remember. But, sure, he said he wasn't happy about it, absolutely.

Mr. BARON. Are you familiar with Canon 2 of the Code of Judicial Conduct? I'll read it to you.

Mr. STEWART. I can't recite it.

Mr. BARON. Canon 2(b) says, "A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment." Here's the part I want to emphasize. "He should not lend the prestige of his office to advance the private interests of others nor should he convey or permit others to convey the impression that they are in a special position to influence him."

Wouldn't you agree with me that Judge Nixon, the reason he was disgusted was that he was now in a position whereby he was using the prestige of his office to advance Wiley Fairchild's interests?

Mr. STEWART. I don't think it had anything to do with his office. I really don't. I think he felt disgusted because Wiley knew he was a friend of Bud's.

Mr. BARON. And the fact that he was United States District Judge just wasn't part of that?

Mr. STEWART. I don't think so.

Mr. BARON. Even though Wiley——

Mr. STEWART. Look at what Bud Holmes did for Bill Porter. Bill Porter was in private practice. He was no kind of powerhouse. And he's doing all sorts of strange things for Bill Porter. Bud Holmes, and this is in the prosecutor's closing statement, Bud Holmes does things for friends. It's the kind of guy he is. I don't think it was his official office.

Mr. BARON. Are you finished?

Mr. STEWART. Sure.

Mr. BARON. Even though Wiley Fairchild, when he was taped by Jarvis, said he likes to put his money where he can gather influence, words to that effect, and he talks about how it's nice to put it with Governors and judges?

Mr. STEWART. Well, you're switching the subject now from what Judge Nixon had in his mind to what Wiley had in his mind.

I don't think Judge Nixon had that in his mind. With respect to what Wiley had in his mind, Wiley—it's in the testimony, he's a big contributor to a lot of political campaigns.

Mr. BARON. If I understood your presentation, at one point you said that the beginning of this investigation, in your view, was the Petit Bois case; is that a fair statement? I thought that's what you said?

Mr. STEWART. The first episode that points at Judge Nixon is the Petit Bois investigation in Florida, yes.

Mr. BARON. Now, I'm talking about the beginning of the investigation of the Fairchild matter in your view was the Petit Bois case; I thought that's what you were saying.

Mr. STEWART. Well, I may have been unclear. We don't know if there was a connection between Skip Jarvis and Petit Bois. That FBI Agent named Don Baldwin is an old acquaintance, we believe, of Skip Jarvis. The Petit Bois investigation was being shut down in Florida.

And we have a suspicion, which we've articulated, that somebody somehow, maybe inadvertently, maybe advertently, got word over to Jarvis, or he stumbled upon it, and something was cooked up.

We don't know the answer to that.

Mr. BARON. Weingarten has testified under oath here that what he did in Fairchild investigation and prosecution had no relationship whatsoever to whatever might have happened in the Petit Bois case; you remember his testimony?

Mr. STEWART. That he knows of, sure.

Mr. BARON. Well, since he was controlling the Fairchild case and running the Fairchild case——

Mr. STEWART. That's right, but he doesn't know how Skip Jarvis came upon this information.

Mr. BARON. I'm not talking about Skip Jarvis. I'm asking about the actions of Mr. Weingarten. He has testified under oath that nothing in Petit Bois had anything to do with what he did in the Fairchild investigation.

Mr. STEWART. I think once he got started, that is true to some extent. I am restricted by Rule 6 with respect to other matters that I think he may have overstated.

Mr. BARON. Do you have any proof, rather than speculation—proof—that in fact Weingarten's handling of the Fairchild case was affected consciously by him in terms of Petit Bois, relative to Petit Bois?

Mr. STEWART. I don't think that's what I've been saying, no.

Mr. BARON. I'm just asking whether you have it.

Mr. STEWART. I can't point to that, no.

Mr. BARON. I'd like to read to you some of Bud Holmes' trial testimony, particularly focusing with regard to the conversation—his version of the conversation.

This comes from the transcript, around 736.

We was riding up to pick up the turkeys. This would have to be 6:00, 6:30, 7:00 o'clock, riding out. And Judge Nixon told me, he said, Bud, I never would have asked you to do anything against your oath of office, never ask you to do anything embarrassing to you, wouldn't ask you to do anything wrong.

I said, yes sir.

He said, I was out at Mr. Fairchild's and he asked me to put in a good word for his boy, or would I say something to you about Drew. I don't think he said Drew; I think he said his boy.

I said, you know, well, I don't know, I don't know, what is it you want? You want an apology? I don't know. What does the man want.

Then the question is put to him: Are you saying, did you say that to Judge Nixon?

Answer: Yeah, that was about my response. I can't remember this, because as I recall this was like in May of 1982, you know, when this occurred. But that was about my response.

I mean, I was feeling rich and good looking. And you know, that would have been my typical type answer.

He said, I'm not asking you to do anything. I'm just saying that Mr. Fairchild asked me to put in a good word.

Well, I knew Mr. Fairchild and the Judge were kind of getting to be buddy-buddies there.

Question: How did you know that?

Answer: Pardon?

Question: How did you know that?

Answer: He had told me, or Carroll Ingram had told me that they were—or he told—could have come from Mr. Fairchild.

Question: Did he tell you why he called Mr. Fairchild?

Answer: He could have. I don't recall offhand. It seemed like he might have told somewhere during the conversation. I knew there was a chance he was going to make some more oil and gas investments with him.

Seemed like he said maybe Mr. Fairchild said they were going to take a trip somewhere, you know. Now, what point in time, I don't remember. But all of this was, at that time, it wasn't nothing real important to me to really remember, so don't hold me and say it occurred on that time.

But general impression I had was, they got to be on a first name type basis, and friendly. So I took it on myself, said, well, Judge, hell, I'm district attorney, I'll pass it to the files.

And he said, no, I'm not asking you to do that. I'm not asking you to do anything now.

He then testified a little bit later about what happened at the farm.

Well, OK, we rode on out to the farm, got the turkey, went inside. I asked him to come in, have a drink.

Question: Whose house did you go to?

Mr. STEWART. What page are you on? I'm sorry.

Mr. BARON. According to this, it is 736 to 738, 739, 740.

Mr. STEWART. All right, go on. It's blanked out here, but you'll come to it, I guess.

Mr. BARON. Well, I represent to you that that's the text.

Mr. STEWART. Fine.

Mr. BARON. Whose house did you go to?

Answer: Go to mine, which was out in the Barrington community. We went inside. He said that he'd come in and have a drink if I had some Royal Salute. That's kind of a joke between us. Very expensive Scotch whiskey. Somebody gave it to me for Christmas a year earlier, and I said I did.

He came in. We had a drink. Probably had a couple of drinks. And I told him I already had this arrangement worked out with Bill Porter. The man had the same agreement that the Federal court had offered, which was probation and a fine in return for his cooperation.

He said, do you mind if I call and tell Wiley, or he could have said Wiley, Mr. Fairchild. He said, did he know? I don't know. I assume he did. Carroll Ingram sure knew it. And so he said, do you mind if I tell him? I said, no, I don't care. So he called him.

And as I recall the conversation, it's something like——

And then the question is: Who made the telephone call?

Answer: Pardon?

Question: Who made the telephone call?

Answer: He did. And he told him, he said, I'm out at—do you remember the man we were talking about today? I'm out at his farm. And he tells me that your son isn't going to jail. Which is true, you know, because of the plea arrangement. And I just wanted to call and tell you that.

And he thanked him, told him, I appreciate you letting me make some of these investments, you know, with you. And he said, you know, the Judge's salary, and the number of children that I'm trying to educate and so forth, it was kind of hard, and I do appreciate this opportunity.

And with that, I told him, I said, let me speak to him. And I picked the phone up. And I said, Mr. Fairchild, I want to let you know. I hope you don't think there's anything personal about Drew and us. And he said, no, I never thought that.

I'm real embarrassed about that and so forth. And I take full blame here, because Judge Nixon did not ask me to say or do this. But I told him, I said, I said, I want to let you know that I want Judge Nixon to have credit for helping the boy.

Of course, I was misleading him. Because I already had the agreement worked out with Bill Porter. And I told him, I said, I'm going to pass the case to the files.

You know, I told Mr. Fairchild that. And that was, you know, basically the sum and substance of it.

OK, now that's Holmes' testimony about the ride out and the farm.

Is it your position, first of all, that that doesn't constitute a discussion?

Mr. STEWART. It's my position——

Mr. BARON. That that series—what Holmes describes.

Mr. STEWART. First of all, I think you've got to understand our problems—and I think it's the subcommittee's problems—with that description.

It is uncorroborated in several respects; the car ride; how could you believe that Judge Nixon would say on the phone, I want to thank you for the investment, it's so hard to educate my children. Really think he was that craven? That just doesn't ring true.

I think there is a real problem with this testimony, you bet. But I think even accepting it as true, and that was my fourth point, talking about count three, I don't think that's a real discussion.

I think it is absolutely reasonable for somebody to say, that wasn't a discussion about Drew's case. That's when I got caught in the middle of Wiley and Bud about that blackmailing thing.

Mr. BARON. And so it's your view that Judge Nixon, having been sworn to tell the truth, the whole truth, and nothing but the truth, when he's asked, did you ever discuss the Drew Fairchild case with

Bud Holmes, and he says he doesn't recollect that, and we know now full well he did recollect it at the time——

Mr. **Stewart**. He recollected this conversation.

Mr. **Baron**. Right.

Mr. **Stewart**. Well, not this one that Bud describes.

Mr. **Baron**. A conversation.

Mr. **Stewart**. The one Judge Nixon described; let me be clear.

Mr. **Baron**. You think his failure to disclose that in response to that question was still the truth, the whole truth, and nothing but the truth.

Mr. **Stewart**. Yes, I really do. Mr. Baron, you know you are imposing an impossible burden on witnesses. Witnesses are nervous. Witnesses do the best they can. That's what the Supreme Court wrote about in Bronston.

They mess up sometimes. Mr. Weingarten messed up a few times. It happens.

Mr. **Baron**. And also with regard to count four—bear with me for a moment—it's your view that when Judge Nixon said he never talked to anyone, State or Federal, prosecutor or judge, to in any way influence anybody with respect to this case, that that was the truth, the whole truth, and nothing but the truth, given the conversation that he had with Holmes?

Mr. **Stewart**. Sure, sure.

Mr. **Baron**. That's your view?

Mr. **Stewart**. Absolutely. He wasn't trying to influence the man about Drew's case.

Mr. **Baron**. That he never talked to anyone, State or Federal prosecutor.

Mr. **Stewart**. To influence him. You can't chop up the sentence the way you want to.

Mr. **Baron**. He didn't say "to". I don't see the word "to".

Mr. **Stewart**. The "to" was stuck in in brackets in the indictment.

Mr. **Baron**. I'm looking at the indictment.

Mr. **Stewart**. OK. When the Government quoted it in their briefs and at trial, we always put "to" in brackets. We wondered, was that "influenced", maybe, in the past tense, with a "d" on the end, or was it "to influence"?

We got that concerned about it. When we back and listened to the tape, there's a little pause, and then it's influence, and it sounds like the Government's right; it probably should have been "to influence". Otherwise, it's not a grammatically meaningful sentence.

I'm not being cute by adding "to influence". I think that's what it has to be read to mean. And I don't think he did it, no.

Mr. **Baron**. And with regard to May 14th, that whole question about that date, the significance, of course, wasn't May the 14th as a date. The real issue was whether the conversation had taken place before the case was passed to the file or after the case was passed to the file; isn't that right?

That was what was the material issue, wasn't it?

Mr. **Stewart**. There were two issues. Whether it happened before or after I don't even think was that material, no, but it was made an issue at trial, and it was disputed, yes.

When you ask if it was material——

Mr. Baron. Whether it was May the 14th or June the 14th was less significant than whether it was before December of 1982 or after December of 1982——

Mr. Stewart. Surely less significant.

Mr. Baron. —because that's when the case was passed to the file, correct?

Mr. Stewart. Surely less significant, yes.

Mr. Baron. And isn't it a fact that Judge Nixon testified at trial that he had not spent a minute that day in Hattiesburg, he was positive. He was in chambers that afternoon.

Mr. Stewart. That's his testimony.

Mr. Baron. And of course when he took the stand at trial he was sworn to tell the truth, the whole truth, and nothing but the truth, correct?

Mr. Stewart. Yes, the best he knew, and the best he was able——

Mr. Baron. I have no further questions.

Mr. Edwards. Any further questions from the subcommittee?

Mr. Sensenbrenner. No questions, Mr. Chairman.

Mr. DeWine. No questions.

Mr. Dannemeyer. No questions.

Mr. Edwards. The gentleman from Michigan, Mr. Conyers.

Mr. Conyers. I did not—I was not here when it was explained why Judge Nixon declined to testify.

Could you make that clear?

Mr. Stewart. I mentioned right when I started here. And the real reason was—and it was advice of counsel—he is incarcerated now; he does not have access to his files; I do not have ready access to him; we had two weeks notice of this actual hearing date; and with all the things that needed to be done to prepare him properly to respond to questions, just was not possible.

We felt sure that it would just not be persuasive, it would not cut the mustard for anybody for him to say up here, oh, gee, I don't remember, I'm not sure, refresh me. He really would have to be up to snuff.

It's years ago this stuff happened, and we just didn't have a chance to put it together.

Mr. Conyers. It's been argued here that this subcommittee should not be bound by the jury's determination of guilt.

Is it not reasonable for us to respect the fact-findings of the jury in this regard, because they have been in a better position than even us to make such determinations?

And could we not then take that into consideration in the matter before us?

Mr. Stewart. I think it would be—and I've said this today—it's absolutely natural to take that into consideration. And it's got to have an influence on you, of course.

I think, though, that because of the various matters we have tried to bring to your attention, this particular verdict, in these circumstances, the fact-finding that was made, the compromise verdict that's almost certainly there after all those many hours of deliberation, indicates that that is a particular fact-finding that is not properly deferred to, particularly in view of the way the Government brought this case.

That is our argument, but I surely recognize that it is a legitimate consideration of the subcommittee, yes, sir.

Mr. **CONYERS**. Well, do you argue that in cases of impeachment, that the Congress should not be bound by any other court's findings?

Mr. **STEWART**. Absolutely. As I said, in the Claiborne case, when the Senate refused to adopt article three, impeachment article three, which was, simply, he should be impeached because he's been convicted, that was the message.

And the point is, it's circular and it's unfair, if somebody has been wrongly convicted, for him then to be impeached because he was convicted.

You can impeach him for those crimes if you think they were crimes. But the Constitution does not allow you just to say, oops, he was convicted; we'll impeach him too.

Mr. **CONYERS**. Thank you very much.

Thank you, Mr. Chairman.

Mr. **EDWARDS**. Mr. DeWine.

Mr. **DEWINE**. Thank you.

Counsel, I wonder if you could summarize for us the Judge's versions of these two conversations. I'm not sure I understand in my mind what his version of the facts are.

The conversation with Wiley Fairchild and with Bud Holmes.

Mr. **STEWART**. I'm a little anxious about getting it wrong.

Mr. **DEWINE**. Well, we have the transcript, and we'll have a chance to look at it. But for today, it would be helpful to me at least if you could give me your best case.

Mr. **STEWART**. Surely. Let me obviously preface my remarks by saying the transcript obviously controls.

I think with respect to Mr. Fairchild, the conversation with Mr. Fairchild, there's really no dispute, and no lack of clarity. The subject was Wiley's unhappiness about blackmailing by Bud Holmes and maybe Carroll Ingram.

Judge Nixon was shocked. These were friends of his who were being accused. It was kind of a peculiar thing for Wiley to do. It made him wonder a little bit about Wiley.

I'm reading this into it, but I think it's in the testimony.

And that was the exchange. It was 15 or 20 minutes, as I recall the testimony.

Later on, when he's at Bud's house, he recalls, as I recall the testimony, it was weighing on his mind, the blackmail allegation. And he mentioned it. I can't remember the words; it's in our memorandum.

And Bud's response was, it's been worked out. It's been worked out; not a problem. Man's paranoid. He thinks everyone's after him for his money.

Then there's a phone call. The Judge remembers that the call was not made by him. And he gets on the phone with Wiley. Wiley says, thank you for raising the issue with Bud. And he had raised the issue with Bud; that fits. And it was a brief exchange, and then he handed the phone back to Bud.

That's his testimony, as I recall it.

Mr. DeWine. But his state of mind at that time you're saying was focused on the blackmail, and that's how he was looking at the case?

Mr. Stewart. Well, at the time of the conversations, that's what the conversations were about. At the time of his testimony, his state of mind was on this issue of transferring the case from Federal to State court.

I may be reading your question wrong, Congressman.

Mr. DeWine. No, that's correct.

So when the questions were asked at the Grand Jury, which is really, it seems to me at this point, at least, the heart of this matter, describe again his state of mind.

What are you saying that the Judge was thinking about? Because I'll be very blunt, when you look at the transcript, when you look at the cold transcript, you know, the questions asked about was there a discussion. The answer is unequivocally no.

And then you look at the facts that you have just recited, taking it in the best light for the Judge, it is hard to see how you can square those two. And I'm trying to see how you propose to make the—to build that bridge.

Mr. Stewart. Well, I appreciate your question. And I think you can build it a couple of ways.

I think first of all that the exchange that was there was not about Drew Fairchild's case; it was about blackmailing. It had a connection to Drew Fairchild's case; absolutely. But when Carroll Ingram was asked the question: Did you discuss Drew Fairchild's narcotics matter, he didn't mention his knowledge of this phone call.

When Wiley Fairchild was asked, did he discuss your son's case with Judge Nixon, he didn't mention this exchange concerning the blackmail.

It was not understood—that question was simply not understood to refer to Drew's case.

Mr. DeWine. What was it referring to if it wasn't referring to his case? I mean the blackmail stemmed from the case, did it not?

Mr. Stewart. I misspoke, pardon me. The question was not understood to refer to the exchange that had occurred, as opposed to Drew's case. Drew's case was understood by all three of those witnesses to involve some further discussion.

Carroll Ingram forthrightly said at trial: I have never had a discussion about Drew Fairchild's case with Judge Nixon.

He'd still had this exchange concerning the phone call. The phone call concerned Drew Fairchild's case. But he didn't think it was a discussion about the case.

I think Judge Nixon went through the same mindset. I also think he did understand it to involve—he had this mindset that it involved the transfer of the case from Federal court to State court. You can really track that in his answers.

The speech about—I cannot remember the case name; the case about jurisdiction—that's what he's thinking about.

Mr. DeWine. You think that would become apparent to us as we read through the whole context of the transcript? Am I going to pick that up when I read the ten pages before that of the transcript?

Mr. **STEWART**. I certainly hope so. My smile was only that I hope so. I think if you read the two transcripts, and they are exhibits 22 and 23, they really are the guts of the case.

I think when you read them in sequence, you can follow how Judge Nixon came up with this mindset. It was not an unreasonable thing for him to conclude.

And Mr. Weingarten has confirmed here that that really was what he was asking about.

Mr. **DEWINE**. How about when the counsel, the prosecutor, conducted the interview in the Judge's chambers that we heard yesterday? Is your argument basically the same?

Again, when you listen to that, it sounds as if it's hard to square his denials with your version of the facts now.

Mr. **DEWINE**. The record is less clear there as to what was in Judge Nixon's mind. I think Mr. Baron brought that out in his questions here.

I'm a little limited in my response there because of that. I think you can infer that Judge Nixon was really caught cold at that time. The guy calls up and says, we're coming up in an hour.

And you know, talk to him if you like; and he does.

And I think his answers there are as straightforward as he can get under the circumstances. I don't recall testimony about his mindset at that time.

Mr. **DEWINE**. Thank you, Mr. Chairman.

Mr. **DANNEMEYER**. Mr. Chairman?

Mr. **EDWARDS**. Yes, Mr. Dannemeyer.

Mr. **DANNEMEYER**. How long did the jury deliberate?

Mr. **STEWART**. I'm advised it's 18 hours. I'm not 100 percent sure.

Mr. **DANNEMEYER**. Did the jury come in and ask that the testimony of any witnesses who testified at the trial be reread?

Mr. **STEWART**. Again, I'm advised that the answer is no. But I do not know that of my own knowledge. I understand the jury came back with several questions, but I really don't know the sequence there.

I'm sorry I can't help.

[Counsel conferring.]

Mr. **STEWART**. I'm afraid we cannot be too sure about the answer there.

Mr. **DANNEMEYER**. I have no further questions.

Mr. **EDWARDS**. Are there any further questions? Thank you very much, Mr. Stewart.

Without objection, the subcommittee will receive and make part of the record Exhibits 1 through 53, and Exhibits N1 through N43.

The House of Representatives, of course, has received and has accepted the transmittal of the complete pleadings, testimony, trial and appellate record of the *United States* v. *Nixon,* which the subcommittee will use in its deliberations and recommendations.

We will keep the record open for additional materials until Tuesday, June 14th, 1988, at 5:00 p.m.

Shortly thereafter, the subcommittee will consider its decision with regard to House Resolution 407.

Judge Nixon, Mrs. Nixon, Mr. Stewart, we thank you for your appearance here before the subcommittee.

And if there is no further business before the subcommittee, it stands adjourned.

[Whereupon, at 3:20 p.m., the subcommittee adjourned, subject to the call of the Chair.]

JUDGE WALTER L. NIXON, JR. IMPEACHMENT INQUIRY

WEDNESDAY, JULY 6, 1988

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:10 a.m., in room 2226, Rayburn House Office Building, the Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Conyers, Schumer, Sensenbrenner, and DeWine.

Staff present: Alan Baron, special counsel; Catherine A. LeRoy, chief counsel; Peter Keith, assistant special counsel; Pamela Naughton, assistant special counsel; Alan M. Slobodin, associate counsel; Kitty Urban, clerk.

Mr. Edwards. The subcommittee will come to order.

Today, the subcommittee continues its inquiry into whether United Sates District Judge Walter L. Nixon, Jr. should be impeached.

Hearings were held on June 9th and 10th and will continue today with the testimony of Mr. Wiley Fairchild.

Before we begin Mr. Fairchild's testimony, let me address a few preliminary matters. First, as noted in my opening remarks of June 9th, the subcommittee has invited Judge Nixon to testify in these proceedings under oath, and subject to questioning by the subcommittee and special counsel.

Judge Nixon declined this request, but with our permission, gave a brief opening statement on June 9th. Special counsel has advised Judge Nixon, that despite his earlier refusal to testify, subject to questioning, the subcommittee would be willing to hear his testimony during the hearings scheduled for this week.

Judge Nixon has responded to this second invitation by a letter from Mr. Stewart dated July 1st, stating that the judge, quote, "would like to accept the invitation to testify, if his appearance may be scheduled at least a week after the end of the hearings scheduled for next week, and if he may give his initial testimony under questioning by his own counsel." End quote.

We will talk to Mr. Stewart and Judge Nixon about that request.

Second, special counsel for Judge Nixon urges the subcommittee to hear the testimony of John Baltar. Counsel has presented to us an affidavit of Mr. Baltar. Unless there is some new information not set forth in the affidavit, the subcommittee will simply accept the affidavit in lieu of hearing live testimony from Mr. Baltar.

Third, Mr. Stewart has forwarded to us additional documents that he wishes the subcommittee to review. These additional exhibits, as well as any new exhibits pertinent to this inquiry, that may be addressed during the testimony of remaining witnesses appearing before the subcommittee, will be accepted and considered in our deliberations, if they are relevant.

Let me remind those present that these proceedings to not constitute a trial in any sense. The rules of evidence do not apply in these proceedings.

No objections or other interruptions in the testimony will be permitted.

This inquiry is focusing on whether or not Judge Nixon gave false testimony and is fit to remain on the Federal bench, and all questions should focus on that issue.

Are there statements from any members of the committee? If not, I believe Mr. Fairchild, you may come to the witness table, and I believe you have your attorney, Mr. Larry Gunn with you. Is that correct?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Mr. Gunn, you are also welcome, and you may sit at the table. As you know, you may not make any objections or anything to the committee. This is a committee hearing, not a trial, as you know.

[Witness sworn.]

TESTIMONY OF WILEY FAIRCHILD

Mr. EDWARDS. I believe that the first series of questions will be presented by Assistant Special Counsel Pam Naughton. Miss Naughton.

Ms. NAUGHTON. Thank you, Mr. Chairman. Mr. Fairchild, how old are you?

Mr. FAIRCHILD. 75.

Ms. NAUGHTON. And where do you live?

Mr. FAIRCHILD. Hattiesburg, Mississippi.

Ms. NAUGHTON. And what do you do for a living?

Mr. FAIRCHILD. A principal in oil explorations and in contracting, and in several related companies.

Ms. NAUGHTON. And are you a little nervous today?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. If you need a break, or you need a question explained, just please let us know.

Mr. FAIRCHILD. Thank you.

Ms. NAUGHTON. Now, are you the managing partner in W.R. Fairchild Construction Company, Limited?

Mr. FAIRCHILD. Yes. I'm down as general manager but the construction company, my brother Rodney actually runs it, the day to day operation.

Ms. NAUGHTON. Let's separate for a minute. Is W.R. Fairchild a partnership or a corporation?

Mr. FAIRCHILD. It's a partnership.

Ms. NAUGHTON. And who's in the partnership?

Mr. **Fairchild**. Me and my brother Rodney, and H.T. Fairchild, and two of my nephews, Mark Fairchild and John Fairchild.

Ms. **Naughton**. So it's basically a family-owned partnership?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And W.R. Fairchild Construction Company, is it basically in two parts—that is, the oil part and the construction end of it?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. All right. And who runs the construction end of it?

Mr. **Fairchild**. Rodney Fairchild.

Ms. **Naughton**. And who runs the oil part of it?

Mr. **Fairchild**. I do.

Ms. **Naughton**. When did you first get into the oil business?

Mr. **Fairchild**. In the '30s. I bought—I—the first royalty when the East Texas field hit, and I'd just been dabbling with it on up till 1958, when I got into it pretty heavy.

Ms. **Naughton**. Did you buy some mineral properties from Fairchild-Windham?

Mr. **Fairchild**. We bought some—approximately 25,000 mineral acres from LeDrow Windham and his wife.

Ms. **Naughton**. Do you remember when that was?

Mr. **Fairchild**. It was about '74-'75.

Ms. **Naughton**. 1974?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And could you tell us, the company Fairchild-Windham, who owns that?

Mr. **Fairchild**. I own 40 percent and Rodney, my brother, owns 30 percent, and the construction company 30 percent.

Ms. **Naughton**. Have your oil investments basically been successful? Would you say they've been successful?

Mr. **Fairchild**. Yes. They have.

Ms. **Naughton**. And what's the nature of your oil business? Exactly what do you do in the oil business?

Mr. **Fairchild**. Well, I bought these minerals because it was all bought on prospects, and then we occasionally go out and lease around these prospects, and then—and when we drill a well where these minerals are, we sometimes lease to major companies. Sometimes we put up our own money.

Ms. **Naughton**. So sometimes you work the well yourself, and other times, a major oil company will do the drilling, is that correct?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Would you explain to us the difference between a "working interest" and a "royalty interest."

Mr. **Fairchild**. A working interest, you pay your pro rata share of drilling and completing the well, and the royalty interest—they don't participate in none of that cost whatsoever.

Ms. **Naughton**. And is it fair to say that your return on a working interest is greater than your return on just a royalty interest?

Mr. **Fairchild**. Well, yeah, because you've got one acre of royalties, and one mineral acre, and then when you lease—or you've got 7 acres, or whatever royalty burden a lease carries, less—you know—less the—8/8ths.

Ms. **Naughton**. Now are you in the business of selling your mineral interests on the open market?

Mr. **Fairchild**. No. I don't—I'm not a—what they call a speculator in the oil business.

Ms. **Naughton**. So you buy them to keep, and to keep the profits from the oil?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Do you occasionally sell any mineral interest to close friends or relatives?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And under what circumstances would you sell or convey a mineral interest?

Mr. **Fairchild**. Well, someone would ask me, you know, to—Governor Waler of Mississippi, they said he had some kids to college and he would like to buy into some of my deals, and I sold him some interest.

Ms. **Naughton**. Did you also sell some interest to the Mayor of Hattiesburg?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Any other public officials that you've put into oil deals?

Mr. **Fairchild**. Judge Nixon.

Ms. **Naughton**. Anybody else?

Mr. **Fairchild**. I probably have but I can't—I just can't recall, can't recall.

Ms. **Naughton**. Mr. Fairchild, do you contribute to charities in the Mississippi area?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Could you name some of them that you've contributed to.

Mr. **Fairchild**. Well, in the last 5 years I have contributed to the Girl Scouts some land appraised at 245,000, and then I've given $200,000 in cash. Mississippi-Southern Football's renovated the building there, and I donated 250,000 to that.

Ms. **Naughton**. Do you also donate to William Carey College?

Mr. **Fairchild**. Yeah. I personally donated to them.

Ms. **Naughton**. Do you also contribute to political campaigns?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Would you say you contribute every election?

Mr. **Fairchild**. Yeah, I contributed to somebody in every election.

Ms. **Naughton**. And would these include State and local officials?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And would those include local judges that run for office and prosecutors?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Have you ever contributed directly, or indirectly, to the campaigns of either Judge Weldy, Judge McKenzie, Glen White, or Bud Holmes?

Mr. **Fairchild**. Glen White, I contributed to him indirectly, and probably the others, but I can't recall the exact circumstance nor the amount.

Ms. **Naughton**. Do you remember, did you contribute directly, or indirectly, to Judge Weldy's campaign, or pay off his campaign debt?

Mr. **Fairchild**. I think I did. I think I did but I just can't recall the amount, and who asked me to, but probably, if Carroll Ingram asked me to I did.

Ms. **Naughton**. And Carroll Ingram, just for the record, worked as an attorney and did some work for you as an attorney during the early 1980's, is that correct?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Now your contribution to Judge Weldy, would that have been when he was running for office or after he had lost the election to Judge McKenzie?

Mr. **Fairchild**. I believe I helped make up the deficits, but I'm not sure. It could have been before.

Ms. **Naughton**. And when you say you might have contributed indirectly, do you mean your contributions were anonymous? Could they have been anonymous or——

Mr. **Fairchild**. Yeah. Somebody would come to me and said, you know, so and so needs some campaign funds and I haven't got it, I don't have it to give, and I can remember one case—we gave him $2,500—and I said I'll loan you this and you can let him have it.

Ms. **Naughton**. So you set it up like a loan to another contributor to the campaign?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And the loan is never repaid, is that how it worked?

Mr. **Fairchild**. No; it hasn't been repaid.

Ms. **Naughton**. So it's just basically you giving the money and somebody else giving it to the campaign, is that right?

Mr. **Fairchild**. (Nodding head.)

Ms. **Naughton**. Have you ever contributed to both sides in an election?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Why is that, Mr. Fairchild?

Mr. **Fairchild**. Well, I like both parties and I always told the two parties that I was contributing to. I never did try to hide anything like that.

Ms. **Naughton**. But what was your reason for contributing to both parties?

Mr. **Fairchild**. I liked both people that was running for the same office. Both of them I figured would make good public officials.

Ms. **Naughton**. Now if we can go into some people you know and your relationship with them. For instance, Carroll Ingram, we mentioned him earlier. Is he related to you?

Mr. **Fairchild**. Second cousin.

Ms. **Naughton**. And did he do any legal work for you in the late 1970's and early 1980's?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. He is a lawyer?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Did you help him through law school?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Financially?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And did he campaign for public office?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Was that for the State senate?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And did you contribute to his campaign?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. When you contributed to his campaign, Mr. Fairchild, did you expect that Carroll Ingram would help you out on legislation or any particular situation or problems that you had as a State senator?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Could you tell us, who is Bud Holmes?

Mr. **Fairchild**. He's a criminal lawyer in Hattiesburg and a former district attorney.

Ms. **Naughton**. How long have you known him?

Mr. **Fairchild**. Oh, approximately 20–25 years.

Ms. **Naughton**. Have you had any financial dealings with Bud Holmes?

Mr. **Fairchild**. I probably have but I don't remember it.

Ms. **Naughton**. Is that because if they occurred, they occurred a long time ago, or is it that you just have no specific recollection of any?

Mr. **Fairchild**. Well, it hasn't been lately, no, not in the last few years.

Ms. **Naughton**. Any since 1980, let's say?

Mr. **Fairchild**. I don't remember having any at all. I don't think I did.

Ms. **Naughton**. Did you support Bud Holmes when he ran for district attorney in 1979?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Why did you support him?

Mr. **Fairchild**. He came out to my office and said you don't have a choice but between two crooks and I'm the best one.

Ms. **Naughton**. So he said there were two crooks running and he was the best one?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Did you support him?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Did you give him money for his campaign?

Mr. **Fairchild**. I'm sure I did.

Ms. **Naughton**. Do you remember how much?

Mr. **Fairchild**. It would probably have been $2,500.

Ms. **Naughton**. Would this have been directly or through somebody else?

Mr. **Fairchild**. It would have been through somebody else.

Ms. **Naughton**. Mr. Fairchild, would it be fair to say you prefer to act behind the scenes?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And is that why other people might contribute your money to candidates?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Why is that, sir? Why do you prefer to do it——

Mr. **Fairchild**. Well, of course I'm intimidated in a way, and this person I give the money to, if something comes up I'll get him to go talk—you know.

Ms. **Naughton**. So you have an intermediary there?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now who is Skip Jarvis?

Mr. **Fairchild**. He's married to my daughter's—my oldest sister's granddaughter.

Ms. **Naughton**. So he's related to you by marriage?

Mr. **Fairchild**. Yes.

Mr. **Naughton**. And is he a lawyer?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Did he work for you from the period of 1979 to 1983?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And was that at the construction company?

Mr. **Fairchild**. Well, he worked in the oil division.

Ms. **Naughton**. In the oil division of W.R. Fairchild?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And did you put him through law school?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Did you fire him, eventually?

Mr. **Fairchild**. Yeah. I fired him because he wouldn't take a polygraph test, but I kept him on the payroll and paid his way through college.

Ms. **Naughton**. When you say you fired him because he would not take a polygraph test, was that in connection with the Judge Nixon deals, or was it a totally unrelated thing?

Mr. **Fairchild**. Well, I didn't know at the time I fired him what it was, and—but I knew it's something that he had done, that he didn't want us to find out about. And I later found out that he's trying to get me kicked out of the company.

Ms. **Naughton**. All right. Could you tell us what you found out about that.

Mr. **Fairchild**. Well, he called my sister at Rochester, and told her that we need to get Wiley out of the company, he's getting old, he's senile, and he's making bad decisions; he hasn't been in the office in three weeks.

Ms. **Naughton**. So he was causing trouble within your partnership of W.R. Fairchild, is that fair to say?

Mr. **Fairchild**. Yes. Yes.

Ms. **Naughton**. Is that still a problem, Mr. Fairchild? In other words, is Mr. Jarvis still causing trouble within the partnership?

Mr. **Fairchild**. No; no. My oldest sister died the first of the year, and while his wife inherited one percent of the construction company, he's not in a position to give any trouble now.

Ms. **Naughton**. Isn't he the executor, though, of her estate?

Mr. **Fairchild**. Yes. Yeah.

Ms. **Naughton**. Now who is Drew Fairchild?

Mr. **Fairchild**. That's my son.

Ms. **Naughton**. And how old is he?

Mr. **Fairchild**. He's 55.

Ms. **Naughton**. Was he raised by you?

Mr. **Fairchild**. No.

Ms. NAUGHTON. Where was he raised?

Mr. FAIRCHILD. In Ponchatoula, Louisiana.

Ms. NAUGHTON. And how would you describe the history of your relationship with your son Drew?

Mr. FAIRCHILD. Bad. Real bad.

Ms. NAUGHTON. Why is that?

Mr. FAIRCHILD. Well, his mother died when he was about 11 years old, and I just think it's coming from a broken home.

Ms. NAUGHTON. And you remarried, is that correct?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Did he ever work for your company?

Mr. FAIRCHILD. Yes, several times.

Ms. NAUGHTON. And how did that turn out?

Mr. FAIRCHILD. Well, he'd quit and he never would stay with the company, regular, because I wouldn't show him no favoritism. He had to get out there and work like everybody else.

Ms. NAUGHTON. And he didn't like that?

Mr. FAIRCHILD. He didn't like that.

Ms. NAUGHTON. Now, did there come a time when he left the company, around 1979, or early 1980?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And what job did he take? Was it at the airport?

Mr. FAIRCHILD. He was running the airport at Hattiesburg, him and Bob Royals.

Ms. NAUGHTON. Mr. Royals was his partner in this?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. What did they do at the airport?

Mr. FAIRCHILD. Well, they serviced all the planes that would come in with gasoline, and they'd spend the night, they'd—you know—tie them down, or put them in the hangar, and work on the planes.

Ms. NAUGHTON. They would refuel them?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Now in August of 1980, did the Federal authorities seize a planeload carrying a ton of marijuana at the Hattiesburg Airport?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. How did you learn of this?

Mr. FAIRCHILD. Well, I heard it on the news. That's the first that I knew of it.

Ms. NAUGHTON. And did you come to learn that Drew was involved in this planeload of marijuana?

Mr. FAIRCHILD. Yeah, I've learned about that later.

Ms. NAUGHTON. How did you come to learn that Drew was involved?

Mr. FAIRCHILD. I don't remember whether it was—he told me, or Carroll Ingram told me, or who it was.

Ms. NAUGHTON. Did Drew discuss it with you?

Mr. FAIRCHILD. Yeah, he discussed it.

Ms. NAUGHTON. What did he tell you?

Mr. FAIRCHILD. Very little because I was very upset at him.

Ms. NAUGHTON. Did Drew get an attorney?

Mr. FAIRCHILD. Yes. He had Bill Porter.

Ms. NAUGHTON. Bill Porter?

Mr. **Fairchild**. An attorney in Hattiesburg.

Ms. **Naughton**. Did he pick Bill Porter, or did you pick him, or how did that come about?

Mr. **Fairchild**. I don't—i can't say for sure how it came about, but Bill Porter and Bob Royals was real close friends, and I just surmised that it—that that's how it came about.

Ms. **Naughton**. After Drew got the lawyer, got Bill Porter, did they negotiate a deal with the U.S. Attorney's Office in Jackson on the status of Drew's case?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And what was the deal that Drew and his attorney worked out with the U.S. Attorney, George Phillips, on that case?

Mr. **Fairchild**. $15,000 fine and a 5-year suspended sentence.

Ms. **Naughton**. Did you come to learn what Drew's involvement was in that drug bust?

Mr. **Fairchild**. Yes. Someone made him a proposition, that they'd give him $25,000 if he'd fuel the plane up at night.

Ms. **Naughton**. Let it land there, fuel it up, let it go, and he would get 25,000, is that right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Now was part of his deal with the Federal Government also that he cooperate and testify against the bigger dope dealers that had arranged this?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And did part of that plan include him setting up another deal, that then the Government could investigate and trace?

Mr. **Fairchild**. Well, all he told me—he says, they said if I'd get another—get a plane to come in here, where they could bust it, that everything would be taken care of, and who they were—you know—I don't know, and I thought it might have been the Feds at the time, but later I'm led to believe it was just local narcotics.

Ms. **Naughton**. The Mississippi Bureau of Narcotics?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And was it your understanding that if Drew cooperated in this regard his case would be dismissed, or that he would simply have to serve probation and a fine?

Mr. **Fairchild**. Well, I was led to believe that he might not have to do that, but whatever Drew was telling me—and we wasn't close and I didn't pin him down, and I couldn't always believe what he told me anyway, so——

Ms. **Naughton**. Did there come a time when you learned he wasn't cooperating with the authorities, that they thought he wasn't cooperating, and weren't going to give him the deal?

Mr. **Fairchild**. When I learned—the best I remember, I learned it after he was indicted.

Ms. **Naughton**. By the State?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now so we get this clear: He reaches his agreement with the Federal Government to cooperate in around January of 1980, is that correct?

Mr. **Fairchild**. I think that's correct, yeah.

Ms. NAUGHTON. But he's not indicted by the Federal Government, right?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. So it's just an agreement he's worked out, without indictment yet?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Now, did you ever have any discussions as to what—while his case was in Federal jurisdiction, you know, and his deal with Mr. Phillips, the U.S. Attorney?—was it ever discussed who the judge might be that would eventually draw Drew's case and sentence him?

Mr. FAIRCHILD. No; no. Not, not in my presence.

Ms. NAUGHTON. All right. Did you ever have it in your mind who that judge might be?

Mr. FAIRCHILD. No; no.

Ms. NAUGHTON. Now did there come a time that there was a problem with Mr. Porter's legal fees?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. What happened?

Mr. FAIRCHILD. My son said that he worked 20 hours at the most, and if he thought about it at night it might run 25 hours, and the going rate there was $50 an hour, and I said, well, I'll give him the benefit of the doubts and I paid him $2,500, plus a hundred and something dollars for expenses.

Ms. NAUGHTON. So you thought he was overcharging?

Mr. FAIRCHILD. At that time, yeah.

Ms. NAUGHTON. How much was Mr. Porter asking for?

Mr. FAIRCHILD. I later found out he was asking—told Drew it'd be $10,000.

Ms. NAUGHTON. And how much were you willing to pay? How much did you pay him at first?

Mr. FAIRCHILD. Well, that was it, was the $2,600. $2,600, plus.

Ms. NAUGHTON. Did Mr. Porter then sue to collect the rest of his fees?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Did he sue you or just Drew?

Mr. FAIRCHILD. He sued Drew.

Ms. NAUGHTON. Drew?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Now, Mr. Fairchild, as of February of 1981—this is roughly a little over a month after Drew has made his deal with the Federal Government to cooperate and get probation—what did you believe, in your mind, was going to happen with Drew's case?

Mr. FAIRCHILD. Repeat that question now.

Ms. NAUGHTON. As of February 1981, right after Drew entered his agreement with the Government and was being interviewed by the agents, what did you believe was going to happen to Drew's case?

Mr. FAIRCHILD. He had to pay a $15,000 fine and get a 5-year suspended sentence.

Ms. NAUGHTON. And he would not go to jail?

Mr. FAIRCHILD. That's right.

Ms. NAUGHTON. And this was going to be worked out by Mr. Phillips in the U.S. Attorney's Office, is that correct?

Mr. Fairchild. Yes.

Ms. Naughton. Now did you come to learn that in the summer of 1981, that Drew was actually indicted by the State authorities?

Mr. Fairchild. Yes.

Ms. Naughton. And was Bud Holmes the district attorney at the time?

Mr. Fairchild. Yes.

Ms. Naughton. Now how did you learn about this indictment?

Mr. Fairchild. Bud called me and told me that Drew had just been indicted, and says you need to get him, to get Bill Porter, or Carroll Ingram, or who, and come on down here and I'll let him out on his own recognizance.

Ms. Naughton. When Bud Holmes called you and told you your son had been indicted, was that a surprise to you?

Mr. Fairchild. Yes.

Ms. Naughton. And why was Mr. Holmes calling you?

Mr. Fairchild. Well, I don't know, unless it was for him to put a pitch in for Bill Porter.

Ms. Naughton. All right. Let's take it step by step. At the time, did Drew live with you?

Mr. Fairchild. No.

Ms. Naughton. He had his own house, his own family?

Mr. Fairchild. Yes.

Ms. Naughton. When Mr. Holmes called you, then, did you think it was because he was pushing Bill Porter as an attorney for Drew? Is that the sense you got?

Mr. Fairchild. I can't remember—I was upset—what I thought. I probably thought he was trying to blackmail me.

Ms. Naughton. Well, I'm not asking about blackmail here. I'm just asking: When Bud Holmes called you, did he tell you to get Bill Porter or Carroll Ingram as an attorney for Drew?

Mr. Fairchild. Yes.

Ms. Naughton. And did you take his advice?

Mr. Fairchild. I called Drew and told him what Bud had said.

Ms. Naughton. And did Drew take Bud's advice and keep Porter as an attorney?

Mr. Fairchild. Yes.

Ms. Naughton. Mr. Fairchild, since you were having this disagreement with Mr. Porter over his legal fees, why did Drew continue to retain him as his attorney after he was indicted by the State?

Mr. Fairchild. Well, it was Drew's decision to do that. I didn't—if he had asked me would you get Bill Porter, I would have said yes.

Ms. Naughton. And why was this? Why did you think Bill Porter was still a good attorney to have?

Ms. Naughton. Well, I knew him and Bud Holmes was good friends.

Ms. Naughton. So he and the prosecutor were good friends?

Mr. Fairchild. Yeah.

Ms. Naughton. And you thought that because of their friendship Porter might be able to do well by Drew?

Mr. Fairchild. Yeah.

Ms. NAUGHTON. Now after Drew was indicted by the State in August of 1981, did you indeed pay Bill Porter the rest of the $10,000 fee?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Why?

Mr. FAIRCHILD. Well, I found out then that the going price for a marijuana bust like that was $10,000. That was common in that era.

Ms. NAUGHTON. Did you think that something would happen to the case, now, because you had paid the fee? In other words, did you think that by paying his fee, that somehow Drew could get a deal now?

Mr. FAIRCHILD. Well, I thought that was the best thing to do, go ahead and pay him his fee. I didn't know what was going to happen, and wasn't promised anything. Never did talk to Bud Holmes nor Bill Porter about it.

Ms. NAUGHTON. Do you know if Drew ever talked to Bud Holmes directly?

Mr. FAIRCHILD. Yeah. He told me he did.

Ms. NAUGHTON. What did he tell you happened?

Mr. FAIRCHILD. I don't remember there. He told me something about Bill Porter wasn't much of a damn lawyer but he'd do all right in this case. That's what Drew told me.

Ms. NAUGHTON. Did Drew say that, or did he say that Bud told him that Porter would——

Mr. FAIRCHILD. He said that Bud told him that.

Ms. NAUGHTON. That Porter wasn't a great lawyer but he would do——

Mr. FAIRCHILD. No, he wasn't a very good damn lawyer, but he'd do all right in this case.

Ms. NAUGHTON. If we can jump ahead, as long as we're on Mr. Porter here. Was Mr. Porter killed in November of 1983——

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. In a plane crash?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Is that right? And was Bud Holmes also in that plane that crashed?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And he obviously survived?

Mr. FAIRCHILD. He did, yeah, but Porter didn't. He drowned.

Ms. NAUGHTON. And the two other people survived as well who were in the plane, is that correct?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Now, taking you now from the indictment, the State indictment—that was in August of 1981—you pay the fee, time elapses and we are in January of 1982. Did Drew plead guilty on the State charges?

Did he reach a deal with Bud Holmes?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And what was the deal he reached with Bud Holmes?

Mr. FAIRCHILD. Five thousand and a 5-year suspended sentence.

Ms. NAUGHTON. When you say "five thousand," you mean a $5,000 fine?

Mr. **FAIRCHILD**. A $5,000 fine, yeah.

Ms. **NAUGHTON**. And did that include his testifying against the other dope dealers in the deal?

Mr. **FAIRCHILD**. Yes.

Ms. **NAUGHTON**. Now Mr. Fairchild, did you ever speak directly to Bud Holmes about Drew's case, to try to get it settled?

Mr. **FAIRCHILD**. I don't think I did. If I did, I think I would remember it, but I don't remember ever talking to Bud. I would have got Carroll Ingram or somebody else to talk to him.

Ms. **NAUGHTON**. Well, Mr. Fairchild, why is that? Because you have testified that you have known Bud Holmes for 20-25 years. You have supported him in his campaign. Why didn't you just go over and see him and straighten out Drew's case?

Mr. **FAIRCHILD**. I just don't operate that way. I more or less operate behind the scenes.

Ms. **NAUGHTON**. Now I am going to stop there on Drew's case and take up the oil transactions you entered into with Judge Nixon. OK?

Mr. **FAIRCHILD**. Yeah.

Ms. **NAUGHTON**. Prior to Judge Nixon investing in the oil transaction, did you know him?

Mr. **FAIRCHILD**. I had met him.

Ms. **NAUGHTON**. How many times?

Mr. **FAIRCHILD**. Just once, that I recall.

Ms. **NAUGHTON**. And where was that?

Mr. **FAIRCHILD**. It was at a cocktail party in Hattiesburg.

Ms. **NAUGHTON**. Did you talk to him?

Mr. **FAIRCHILD**. Yes.

Ms. **NAUGHTON**. For a long time, or——

Mr. **FAIRCHILD**. Well, I don't remember. Four, five minutes, or something like that.

Ms. **NAUGHTON**. At that time did he ask you to be put in an oil deal?

Mr. **FAIRCHILD**. If he did I don't remember it.

Ms. **NAUGHTON**. I'm sorry. Are you finished?

Mr. **FAIRCHILD**. Yeah.

Ms. **NAUGHTON**. Did you know Walter Nixon before he became a judge?

Mr. **FAIRCHILD**. No.

Ms. **NAUGHTON**. Is he a relative of yours?

Mr. **FAIRCHILD**. No.

Ms. **NAUGHTON**. Was he a close friend?

Mr. **FAIRCHILD**. No. I wouldn't say he was a close friend.

Ms. **NAUGHTON**. Did you know that Judge Nixon and Carroll Ingram were good friends?

Mr. **FAIRCHILD**. Yes.

Ms. **NAUGHTON**. How did you know that?

Mr. **FAIRCHILD**. Well, just from the general talk around the coffee shops.

Ms. **NAUGHTON**. Did Carroll Ingram tell you that he socialized with Judge Nixon?

Mr. **FAIRCHILD**. Well, he did, but I don't remember just coming out blunt and saying that. But he let me know that he was good friends with the judge.

Ms. NAUGHTON. Did Carroll Ingram practice before the judge, occasionally, in Federal court? Did he have cases in front of him?

Mr. FAIRCHILD. I think so, but there, again, I couldn't name the first case, if he did practice before him. But I assume he did.

Ms. NAUGHTON. Did you also know that Judge Nixon and Bud Holmes were good friends?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And how did you know that?

Mr. FAIRCHILD. By the same way, just coffee-shop gossip.

Ms. NAUGHTON. Now did there come a time when Carroll Ingram came to your office, and asked you to put Judge Nixon into an oil deal?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. How did that come about?

Mr. FAIRCHILD. I don't remember the details, but he came out there and said that Judge Nixon had some kids he had to put through college, and that he would like me to put him in a deal that could make some money. That's probably not word for word, but to that effect.

Ms. NAUGHTON. Did Carroll say he was just passing this on, or did he recommend that you put him in a deal? Was there any discussion of what you should do?

Mr. FAIRCHILD. I don't remember what the discussion was.

Ms. NAUGHTON. Do you remember, Mr. Fairchild, when this took place? When Carroll Ingram first came to you?

Mr. FAIRCHILD. It was in late '79, or early 1980. I don't—I can't recall exactly when.

Ms. NAUGHTON. Now, I want to direct you, if I could, regarding the date when this first happened. You testified, in 1984, in November of 1984, before the Federal grand jury for the second time. Remember that?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And during that testimony, you were asked when Carroll Ingram first approached you about putting Judge Nixon into an oil deal, and you stated that it was after the drug bust, Drew's drug bust, which was in August of 1980, but before the plea agreement between Drew and the U.S. Attorney.

Do you recall that?

[Witness confers with his counsel.]

Mr. FAIRCHILD. Repeat the question.

Mr. NAUGHTON. Did you testify before the Federal grand jury in November of 1984, that Carroll Ingram first approached you about putting Judge Nixon into an oil deal after the drug bust in August of 1980, but before Drew had reached the agreement with the Federal U.S. Attorney?

Mr. FAIRCHILD. I probably testified to that but I just don't remember.

Ms. NAUGHTON. If we showed you the transcript, would that refresh your recollection? It's on page 8 of the grand jury testimony in November of 1984.

For the information of the members, the members received a copy of the United States' response to Defendant's motion to vacate conviction and sentence, and Mr. Fairchild's grand jury testimony is included as an exhibit to that, which the members received last week.

Mr. **Fairchild**. I see it there, but I don't have no recollection of saying that.

Ms. **Naughton**. Mr. Fairchild, if you had stated, as it says here—if you had stated that Mr. Ingram first approached you after the drug bust, would that have been an incorrect statement, according to your recollection today?

Mr. **Fairchild**. I've been over that so many times, I just get confused every time it's brought up, and I just really don't remember.

Ms. **Naughton**. So what you are telling me is you just do not know for sure?

Mr. **Fairchild**. Just don't know for sure.

Ms. **Naughton**. Could have been; it might not have been?

Mr. **Fairchild**. Yes, it could have been. I'm not denying it. I'm just saying I don't remember.

Ms. **Naughton**. Now getting back to what Carroll told you the first time when he came to you, did he mention a specific amount of money that the judge wanted to invest, or was it up to you to pick the properties and set a price?

Mr. **Fairchild**. I don't remember how the negotiations—I know I was bound to have been the one that—I know I was the one that said what wells we'd put him in, and I know I was the one that set the price. But just who it was at, or who I told, I don't remember.

Ms. **Naughton**. When you picked them, though, picked the wells, how did you know how much acreage to convey to him?

Mr. **Fairchild**. Well, I'd got the feeling that it was something around 10,000, or less, is what he wanted to invest.

Ms. **Naughton**. Is that a feeling you got from talking to Carroll, or talking to the judge or talking to someone else?

Mr. **Fairchild**. Not the judge; someone else.

Ms. **Naughton**. Did Carroll——

Mr. **Fairchild**. Excuse me. If I talked to the judge about that, I could have, but I don't remember, and I don't think I did.

Ms. **Naughton**. So you do not remember actually negotiating the terms of this deal with the judge?

Mr. **Fairchild**. No. I don't.

Ms. **Naughton**. So there was no haggling over the price or the amount of acreage, or anything of that sort. Is that correct?

Mr. **Fairchild**. No.

Ms. **Naughton**. There was also no haggling between you and the judge over which properties you would choose?

Mr. **Fairchild**. No.

Ms. **Naughton**. Now did Carroll Ingram, when he first told you the judge was interested in getting into an oil deal, did he tell you whether or not Judge Nixon was going to give you cash up front, or was going to go get a loan or how that would work?

Mr. **Fairchild**. It was probably discussed but I don't remember the details of it.

Ms. **Naughton**. When Carroll asked you to put the judge into an oil deal, what did you say to him?

Mr. **Fairchild**. I don't remember exactly what I said. I probably said, well, let me think about it; I'll come up with something. I probably said something like that.

Ms. **Naughton**. And did you get back to him, once you had decided what to do?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. You told him you would do it?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Mr. Fairchild, why did you agree to put Judge Nixon into the oil deal?

Mr. **Fairchild**. Because Carroll Ingram asked me to.

Ms. **Naughton**. What difference does that make, that Carroll would have asked you to do it?

Mr. **Fairchild**. Well, if the judge had asked me I would have done it—you know.

Ms. **Naughton**. Would you have done it because he was a judge?

Mr. **Fairchild**. Not necessarily.

Ms. **Naughton**. Was that part of the reason? You had testified you had never met him before, except for once, right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. He was not a close friend; he was not a relative. Was the fact he was a Federal judge part of the reason that you put him into the deal?

Mr. **Fairchild**. He was an influential man. I would say that would have been one of the reasons.

Ms. **Naughton**. And in fact do you remember ever telling the FBI, in April of 1984, that he was influential and could decide if a fine was $500,000 or $250,000?

Mr. **Fairchild**. I don't remember saying that, but I very well could have said it.

Ms. **Naughton**. Were you in the habit of selling your interests to people you didn't know?

Mr. **Fairchild**. Well, I barely knew Governor Waler and I sold him an interest.

Ms. **Naughton**. Did you do that because he was Governor?

Mr. **Fairchild**. Because he is an influential man, and an honest man.

Ms. **Naughton**. When you say because Governor Waler was an influential man, and because Judge Nixon was an influential man, what do you mean by that?

Mr. **Fairchild**. Well, I figured that I'm proud of the reputation that the Fairchild has got, and I figured that Governor Waler, Judge Nixon, knowing I wasn't doing that because I wanted a favor down the road, specifically a favor down the road, but if they could help me, they would.

Ms. **Naughton**. Did you have any more discussions with Carroll Ingram about the structure of the deal?

Mr. **Fairchild**. I probably did.

Ms. **Naughton**. Mr. Fairchild, when was it decided that you would actually carry the promissory note for Judge Nixon for his investment?

Mr. **Fairchild**. I don't remember.

Ms. **Naughton**. Well, was it before the deeds were signed in February of 1981? Or did that come after?

Mr. **Fairchild**. I just don't remember. It would probably have been back in the early 1980s. It could have been back in the early

1980s, but it was—it wasn't too long after I agreed to let him in the wells.

Ms. **Naughton**. That he wouldn't have to pay cash up front. When was that decided?

Mr. **Fairchild**. That I don't remember because I wasn't too concerned.

Ms. **Naughton**. Do you remember this: Was it Carroll Ingram's idea that you allow Judge Nixon to take out a loan to you, that you would carry the note? Was that Carroll's idea, or was it something you offered to do?

Mr. **Fairchild**. I really don't remember, but I would guess that it's something that Carroll suggested.

Ms. **Naughton**. And you weren't opposed to that, is that right?

Mr. **Fairchild**. No, I wasn't opposed to that.

Ms. **Naughton**. Why not?

Mr. **Fairchild**. Well, I just—you know—just wasn't.

Ms. **Naughton**. You didn't want cash up front?

Mr. **Fairchild**. No, I'd have taken cash in a minute.

Ms. **Naughton**. But you didn't demand it?

Mr. **Fairchild**. No. I didn't.

Ms. **Naughton**. Why not?

Mr. **Fairchild**. Well, it's just my nature. I mean, you know, I didn't with the Governor, and I just didn't. That's all.

Ms. **Naughton**. Do you remember the terms of the notes themselves—and we have them for you to look at if you need to—was that they would have to be fully repaid—there are three notes—in 1983.

Do you remember who set that term of the note? Was that your idea or was it Carroll Ingram's?

Mr. **Fairchild**. I don't remember.

Ms. **Naughton**. The notes are for 10 percent interest per annum. Do you remember who set the interest rate?

Mr. **Fairchild**. No. I don't remember who set the interest rate.

Ms. **Naughton**. Regardless of who set it, was that an interest rate that was agreeable with you? Ten percent?

Mr. **Fairchild**. I probably said it was. I mean, I didn't make no fuss about it.

Ms. **Naughton**. Mr. Fairchild, isn't it fair to say, that in 1980 or 1981, that a 10 percent interest rate on an unsecured personal note was fairly low compared to what a bank would charge you for a personal loan?

Mr. **Fairchild**. I would think that's—yes, I think it'd be fairly low.

Ms. **Naughton**. Did you ask for any collateral from the judge for the note? To put up any property?

Mr. **Fairchild**. I didn't.

Ms. **Naughton**. Did you ask Carroll to ask for collateral?

Mr. **Fairchild**. I don't recall. I might have said something about it, but I don't recall, though.

Ms. **Naughton**. You didn't get any collateral, did you?

Mr. **Fairchild**. No. I don't—no.

Ms. **Naughton**. And you didn't secure the note with the mineral leases themselves? In other words, with the property the note was for?

Mr. **Fairchild**. No.

Ms. **Naughton**. Mr. Fairchild, was it part of the agreement, or the plan, or your intent, that if the wells didn't produce, that the notes wouldn't be effective? That means that you wouldn't collect on the notes.

Mr. **Fairchild**. Well, he would have owed me that much, and whether he'd have paid me or not, I don't know.

Ms. **Naughton**. Would you have collected?

Mr. **Fairchild**. I wouldn't have sued him.

Ms. **Naughton**. Do you remember, in your grand jury testimony now—and this is on page 11 of that same grand jury testimony in November of 1984—when you were asked if you had expected to be paid, do you remember testifying that you really were not concerned if you would be paid?

[Witness confers with his counsel.]

Mr. **Fairchild**. When they asked me that question I said I was not of interest, no—really not. I wasn't concerned.

Ms. **Naughton**. Is that a true statement?

Mr. **Fairchild**. Well, what the—more or less that the—I was thinking I wasn't concerned whether he paid me the cash, or what. But I was certainly hoping that I would get paid.

Ms. **Naughton**. When you said you were not concerned, in your grand jury, were you referring to the relatively—to you—small amount that you were owed? Is that what you meant? Or did you mean that you were not expecting it?

Mr. **Fairchild**. No. It is a small amount. I was expecting to be paid.

Ms. **Naughton**. After you agreed to put Judge Nixon into an oil deal, did you look for properties that you could put him into?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And what standards, what criteria, what ideas did you have in mind in selecting the wells you finally selected?

Mr. **Fairchild**. Well, I could elaborate that, on that question for an hour or two, but we was probably drilling 9 or 10, and 12 wells at the time, and I just picked out them that I thought would turn out to be good wells.

Ms. **Naughton**. So you were looking for wells that would be good wells, right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. You were not going to put him in duds?

Mr. **Fairchild**. Well, I did put him in one.

Ms. **Naughton**. We will get to them, specifically, OK?

Mr. **Fairchild**. OK.

Ms. **Naughton**. But your idea was to put him into good wells, is that correct?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Why did you pick three wells? Why not just several acres and one?

Mr. **Fairchild**. Well, because that one well could have been bad, and that would cut your risk down when you put him in three wells.

Ms. **Naughton**. Do you remember how soon after Mr. Ingram asked you to put the judge in this deal, that you actually went and selected the wells?

Mr. Fairchild. No, but it wasn't very long.

Ms. Naughton. And did you select them over a long period of time? Did you take a lot of days to study it, or was it all done in one day or——

Mr. Fairchild. Oh, it was all—I probably done it in 30 or 40 minutes when I made up my mind, and looked at what we had to offer.

Ms. Naughton. Now let's look at the three wells, if we can, for a minute, and for the members' information there is a briefing, a two-page note on the status of the wells, before them.

Now there was the Rogers well in Marion County, Mississippi; the L.D. Ross well in Covington County, Mississippi. Is that correct?

Mr. Fairchild. Yeah.

Ms. Naughton. And there is the Wilkie well in Alabama that you chose, is that correct?

Mr. Fairchild. Yeah.

Ms. Naughton. And Getty Oil Company was working Rogers, Union Oil was working Ross, and Exxon was working Wilkie, is that correct?

Mr. Fairchild. Yeah.

Ms. Naughton. And the Rogers well, the records indicate the Rogers well was tested and tested positive—that means for oil and gas—on April 26, 1980. Is that correct?

Mr. Fairchild. (Nodding head.)

Ms. Naughton. And Ross, April 10th, 1980, and Wilkie was tested for two months, June and July of 1980.

Mr. Fairchild. Yes.

Ms. Naughton. Right? OK. So basically, by the end of July 1980, all three wells have tested positive, right?

Mr. Fairchild. Yes.

Ms. Naughton. And in between time they were shut in for different periods of time, so that the pipelines could be built and the plans could be made to actually get the oil out of the ground, and delivered, is that correct

Mr. Fairchild. Yes?

Ms. Naughton. Now the Ross well, which is the Covington County well, which you alluded to, that was not the big producer, actually began producing in September of 1980, didn't it?

Mr. Fairchild. I think that's correct, yeah.

Ms. Naughton. So by the time you actually signed the deeds to Judge Nixon in February of 1981, this well was already producing, right?

Mr. Fairchild. Yes.

Ms. Naughton. Now if we could stay on the Ross well for just a minute. This was, of the three wells, was the least productive, is that right?

Mr. Fairchild. Yes.

Ms. Naughton. But if you look at the checks that went to Judge Nixon from his share of the royalty payments on the Ross well——

Mr. Fairchild. Yes.

Ms. Naughton. —as of August of 1985, it totalled $2,252.57, and he originally paid a note for that well of $2,000. Does that sound about right?

Mr. Fairchild. That sounds about right.

Ms. **Naughton**. So he actually made good on his investment. I mean, he got his investment back, is that right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. More or less with interest figured in, as of August 1985, right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Now let's talk about the other two wells for a minute. The Rogers well, in Marion County, began producing in April of 1981, correct?

Mr. **Fairchild**. I think that's correct, yeah.

Ms. **Naughton**. And that is just a couple months after you signed—less than two months after you signed the deeds to Judge Nixon, right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And the Wilkie well begins producing in October of 1981, is that right?

Mr. **Fairchild**. I think that's correct.

Ms. **Naughton**. Now the Wilkie well, when it was tested in June and July, tested very well, didn't it?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Do you remember how much?

Mr. **Fairchild**. It was over a 1,000 barrels a day.

Ms. **Naughton**. Over a 1,000 barrels a day?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And how much were you getting per barrel of oil back in 1981?

Mr. **Fairchild**. I don't recall.

Ms. **Naughton**. More than today, wouldn't you say?

Mr. **Fairchild**. It probably was around $28 to $30.

Ms. **Naughton**. Twenty-eight to $30?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And Judge Nixon has three royalty acres in that well, correct?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And paid on his note $4,500 on that, right?

Mr. **Fairchild**. I think that's correct, yeah.

Ms. **Naughton**. So when that tested, in July of 1980, you must have been pretty happy. That was a good test, right?

Mr. **Fairchild**. Sure.

Ms. **Naughton**. That was going to come in well?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now let me just ask you this: If the wells had not tested well, that you had originally picked for Judge Nixon—let's say one of them was a dud and did not test well—would you have changed and selected another well, before you wrote up the deeds?

Mr. **Fairchild**. I don't know what I would have done. I could, or would, but I don't—that never crossed my mind, what I would have done.

Ms. **Naughton**. According to the terms of the deal, would you have been free to do that? In other words, the deal was not for these three wells. It was for whatever three wells you picked, right?

Mr. **Fairchild**. Yeah.

Ms. NAUGHTON. Is that right?

Mr. FAIRCHILD. Yeah, the deeds call for specific wells. Yeah.

Ms. NAUGHTON. Yes, but I'm talking about your deal. When Carroll Ingram came to you and you agreed to the deal in, let's say, early 1980, the deal was that he would buy whatever wells you picked, right? Not just those three wells?

Mr. FAIRCHILD. Well, that I don't remember, but I knew I was going to pick them when I told him I'd put him in.

Ms. NAUGHTON. It was up to you to pick them. In other words, Judge Nixon was not asking to be put in those three specific wells, is that right?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. It was up to you to pick them?

Mr. FAIRCHILD. That's right.

Ms. NAUGHTON. Now if we can, for a minute, direct your attention to Tab 4 of the committee's exhibit book that you have before you.

Do you have before you, Mr. Fairchild, the copies of the leases? Why don't we, for convenience, turn to what was tagged Government's Exhibit 13, which would be the lease on the Marion County well, the Rogers well.

Mr. GUNN. You are referring to a lease. You mean the royalty lease?

Ms. NAUGHTON. The royalty deed, yes. The overriding royalty deed.

Does that look familiar to you, Mr. Fairchild?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Now first of all, we notice on this that the entity conveying the interest to Judge Nixon is W.R. Fairchild Construction Company, Limited. Right?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Was this a Fairchild-Windham well or was it a Fairchild Construction Company well?

Mr. FAIRCHILD. Both.

Ms. NAUGHTON. Both?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. So Fairchild-Windham could have conveyed to Judge Nixon?

Mr. FAIRCHILD. Yeah, or Rodney could have conveyed, or I could have conveyed it.

Ms. NAUGHTON. Well, that is my question.

Mr. FAIRCHILD. What?

Ms. NAUGHTON. You have 40 percent, Rodney has got 30 percent, and the construction company has 30 percent. Right?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. But you make the actual entity that is conveying part of its share is the construction company, right?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. But you signed it, personally, not as a corporate officer of Fairchild Construction, right?

Mr. FAIRCHILD. Yeah, that's it.

Mr. GUNN. We do not have the acknowledgement.

Ms. NAUGHTON. I have it signed at the bottom of the front page. Maybe we are not looking at the same document.

Mr. GUNN. We are, but there is an acknowledgement that indicates whether it is signed as an individual on behalf of a corporation or a partnership, and it is not here on this copy.

Ms. NAUGHTON. This is all we got from the public record. This is what was introduced at trial.

Mr. GUNN. I can assure you that under Mississippi law there will have to be more to this document somewhere. If anybody has a complete copy of it, that would——

Ms. NAUGHTON. Well, let's get to that because that was an objection that Getty Oil had to the conveyance.

But if we could take it step by step, Mr. Fairchild. First of all, when you conveyed to Judge Nixon, why did you convey the construction company's share, out of their 30 percent, and not out of your own personal, your 40 percent?

Mr. FAIRCHILD. I don't remember why I made that decision, but I had a reason at the time. I don't, I just don't remember.

Ms. NAUGHTON. Now did you tell Carroll Ingram about what wells you had selected, and, you know, the legal description and the acreage?

Mr. FAIRCHILD. At some time, yeah. I don't remember when.

Ms. NAUGHTON. And was that so he could tell Judge Nixon what had been selected?

Mr. FAIRCHILD. And so he could write up the instruments.

Ms. NAUGHTON. Was Carroll Ingram supposed to write them up?

Mr. FAIRCHILD. Originally.

Ms. NAUGHTON. Do you know if Carroll Ingram told Judge Nixon what the description was of the wells?

Mr. FAIRCHILD. I don't know.

Ms. NAUGHTON. The status of the wells—that is, when they are drilled, when they are tested, when they begin producing, is all public record, isn't it?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. So you could go to the Mississippi Oil and Gas Board and find that out with a phone call, right?

Mr. FAIRCHILD. Yes. It's public record, but the drilling and completion reports are sometimes two or three months late getting into the Oil and Gas Board office.

Ms. NAUGHTON. In fact the Rogers well, that is the most productive well, isn't it, in Green Creek Field?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Now you said Carroll Ingram was supposed to have prepared the royalty deeds but he did not. Do you know why he did not?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. And eventually, did you have someone in your office prepare the deeds?

Mr. FAIRCHILD. Yes. I wanted to get it on record, so that whoever got the—the reason I wrote them up, I didn't backdate them, and I wanted to get them on record in the courthouse where the—when this checking the title, they'd pick it up and I was hoping that the oil companies would pay the judge direct.

Ms. NAUGHTON. So you would be saved that bookkeeping problem?

Mr. FAIRCHILD. Yes.

Ms. **Naughton**. That did not happen, did it? I mean, the oil companies did not pay the judge directly?

Mr. **Fairchild**. No.

Ms. **Naughton**. Fairchild-Windham and Fairchild Construction paid him directly, is that correct?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. When you—first of all, did you instruct Skip Jarvis to write up the deeds?

Mr. **Fairchild**. I probably did, but somebody in the oil division.

Ms. **Naughton**. When you gave those instructions, did you tell them to leave the grantee blank? That is, who the conveyance was going to?

Mr. **Fairchild**. I probably told them to check with Carroll Ingram, and see, but I may have talked to Carroll and Carroll may have told me to leave them blank. I just don't remember.

Ms. **Naughton**. Well, did you tell anybody in your office, at the time the deeds were being drawn up, who these oil interests were going to?

Mr. **Fairchild**. I don't remember telling nobody in my office where they would go. I knew where they were going, but what specific name they was going to be put in.

Ms. **Naughton**. How were they, then, Mr. Fairchild, to record this in your books, if they did not know who the interest was going to?

Mr. **Fairchild**. Well, we would eventually know, you know. When we started getting our checks, we'd have known who, when the division order come out, it's got it there on how everybody's going to get paid.

Ms. **Naughton**. And a division order is something that the oil company needs so they know——

Mr. **Fairchild**. How much——

Ms. **Naughton**. —how to distribute the royalty payments. Is that right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And that division order is something that had to have been signed by Judge Nixon so he could get his interest acknowledged by the company, is that right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Did you ever see the division orders in this instance?

Mr. **Fairchild**. I probably saw it, yeah, but I don't remember it. I'm not the one that checks our interest when division orders come out.

Ms. **Naughton**. When you selected the wells, the three wells, did you also, in your mind, select how much acreage you were going to convey to the judge?

Mr. **Fairchild**. I went over that with my attorney here but I just don't recall how come there's one acre one time, and three and three and five. I just don't remember what, how that come about.

Ms. **Naughton**. Let me ask it this way, then, because as you know, the deeds from the original ones that are drafted, the acreage is changed, from one acre in each well to three for the Mississippi wells and five—excuse me—to three for the Rogers well, three for the Wilkie well, and five for the Ross well. Right?

Mr. **Fairchild**. Right.

Ms. **Naughton**. Now, in your mind, which most closely approximates, at that time, the value of $10,000? Would it be one acre in each of those wells, or would it be three acres in Rogers and Wilkie, and five in Ross?

Mr. **Fairchild**. I don't understand the question.

Ms. **Naughton**. In trying to understand where the one, one, one came from, and why it was changed in February of 1981 to three, three and five acres, does the value—thinking about what the value was—does that help you in trying to determine where those figures came from?

In other words, I would—and correct me if I am wrong—I would imagine that three acres in the Wilkie well is three times the value of what one acre would be. Is that fair?

Mr. **Fairchild**. Yeah. That's right.

Ms. **Naughton**. So to an original investment of $9,500, what was closer to the value of $9,500? Was it one acre one acre, one acre, or three, three, and five?

Mr. **Fairchild**. I would say more like three, three and five. At the time, not when the deed, when I signed the instrument—not at that time, but back in when the deal was consummated between me and Carroll.

Ms. **Naughton**. But at the time the leases were changed to three, three, five from one, one, one, the mineral interests were worth a lot more money, right?, because one well had come in and all of them had tested positive. Is that a fair statement?

Mr. **Fairchild**. Yeah, it'd been worth a lot more but—it'd been worth a lot more then, when I made the deeds out and sent them down to Carroll. If I hadn't already made the deal back before, I certainly wouldn't have upped it. I would have cut it instead of—you know. I would have cut it if I'd had any idea it'd been that good.

Ms. **Naughton**. You originally signed the deeds that were dated in February of 1981 for one acre, one acre, and one acre. Did you notice the one acre on the deeds, or did that escape your attention? Because you signed it.

Mr. **Fairchild**. Yeah, well, that—I don't know. It didn't come to my attention.

Ms. **Naughton**. How is it that it came to be changed?

Mr. **Fairchild**. I just don't remember whether Carroll changed it, or whether Skip Jarvis changed it, or what.

Ms. **Naughton**. Now, the deeds in front of you are dated 1980. They represent the increased acreage, and these are the ones that were finally filed.

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Now, how is it that they came to be dated February 1980 as opposed to the first set of deeds that were drafted and dated February 1981?

Mr. **Fairchild**. Well, as I stated before, I wanted to get the deeds and—down there, and I wanted—Carroll was supposed to fix them up. But I went ahead and fixed them up. I wanted to get them on record, where the companies would pay Judge Nixon themselves, and I didn't date the things back, and I just dated them the day they was wrote up, and sent them to Carroll Ingram, and he sent them back, and somebody in my office says that Carroll Ingram said backdate them.

Ms. **Naughton**. So, to the best of your understanding, the instructions to backdate came from Carroll Ingram, either directly or indirectly?

Mr. **Fairchild**. Yeah. It didn't come to me directly, but it——

Ms. **Naughton**. Was there a reason given? What did you understand the reason to be?

Mr. **Fairchild**. I don't have a good, clear understanding, what reason that Carroll said, but I assumed that it would go back before the drug bust. But inasmuch as it—it went back to approximately the time the deal was consummated, but it didn't bother me.

Ms. **Naughton**. And isn't it true that you told the grand jury in fact, in November of 1984, that you thought Carroll's instructions were to backdate because the drug bust took place in August of 1980, and it would look better if they were dated February 1980, before the drug bust? Is that your recollection?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now, I want to stick with the subject of the date for a minute. Now I direct your attention to the Marion County well, the deed that was finally recorded, and there's a clause there at the end of the typewritten part that says: "This conveyance is to be effective from the first day of production of the well." Right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now is that a clause you normally put in your deeds?

Mr. **Fairchild**. Yeah, we normally put that in.

Ms. **Naughton**. And are those for wells that are already producing?

Mr. **Fairchild**. Yeah, and it's for some that's not, because when the man goes to the courthouse to get the records, if he don't know when the well come on stream, and nothing, and if you've got that in there he just simply says it's from the first day of production.

Ms. **Naughton**. So you can tell when this is effective by when the well first starts producing, right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. So therefore, this, because of that language in there, this is not effective until the well produces, right?

Mr. **Fairchild**. It couldn't be because there's nothing coming out.

Ms. **Naughton**. So therefore, it did not really matter what date you signed it, or you put down as the date you execute it, because this still is not effective until the well starts producing, right?

Mr. **Fairchild**. That's right.

[Witness and his counsel confer.]

Ms. **Naughton**. Did you want to add to your answer, Mr. Fairchild?

Mr. **Fairchild**. I wanted to clarify that. Once you sign a deed it's effective. You can't go back and—you know—unsign it. It's effective.

Ms. **Naughton**. But by putting this language in this conveyance, "is to be effective"—and this is the conveyance, right?

Mr. **Fairchild**. Yeah.

Ms. NAUGHTON. —"is to be effective from the first day of production" means this is effective when the well first produces. I am not asking you to act like a lawyer, now, and translate the document.

What I am asking you is what you were thinking, in your head, when you signed the deed in February of 1981, and was it your intention that this is not effective—in other words, the money would not flow to Judge Nixon until the first day the well produced?

And if there was a well already producing, the money would start to flow on the first day of production, as opposed to when you actually signed this? Is that right?

Mr. FAIRCHILD. Well, when I signed it and gave it to Carroll Ingram, as far as I'm concerned the judge owed me so much money, and—you know. And if we'd have done the deeds when we—the deal was consummated, we'd probably have that same paragraph in there. If we'd done it before the wells was ever started drilling.

Ms. NAUGHTON. All right. But that would mean that this would not take effect until the wells started producing, right?

Mr. FAIRCHILD. That would mean that it's a legal instrument, and it's something that went on record, but he wouldn't start to get anything, obviously, until the well started producing.

Ms. NAUGHTON. Let's take the opposite case. The Ross well started producing before February of 1981. It had started producing in September of 1980, right?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. So does that mean that because of this term, that the Fairchild Company should have paid to Judge Nixon, starting in September of 1980, royalties starting in September of 1980?

Mr. FAIRCHILD. It means that we should have paid him when the well, from the first day it started to produce.

Ms. NAUGHTON. So by the terms of this, he is actually getting paid for royalties received in September of 1980 and October of 1980, November of 1980, assuming the well is producing?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And it is irrelevant, then, because he is owed that money, whether the signature at the bottom, whether that is dated 1980 or 1981. He is still owed that money from the day that well started producing?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. I want to ask you one more question about the increased acreage, from the original documents that were drafted one, one, one, to the final ones that were drafted three, three and five acres.

Was there any event in Drew's case, in February 1981—and at this point he is cooperating, he has reached his deal with the U.S. Attorney's Office in January of 1981. He is supposedly cooperating with the Federal authorities, and is eventually going to plead guilty and be sentenced in Federal court.

Was there any event, in your mind, connecting Drew's case with increasing the acreage in the final deed that was filed?

Mr. FAIRCHILD. No, no. No, ma'am.

Ms. NAUGHTON. Was there any other independent event going on that would have caused you to increase the acreage?

Mr. **Fairchild**. No.

Ms. **Naughton**. Did you send back the deeds for filing to Mr. Ingram?

Mr. **Fairchild**. I instructed them to. I assume they did.

Ms. **Naughton**. Why did you send them to Carroll instead of just having your own staff file them?

Mr. **Fairchild**. Well, he'd asked me to put the judge in there, and I wanted him to do that paperwork, and pay for the recording of the deeds. Had to send them to Alabama, and to the different county seats where they were.

Ms. **Naughton**. So, in other words, Carroll had asked you for the favor, and he was sure going to do the paperwork, right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now, Mr. Fairchild—by the way, let me ask this question. The deeds on the Mississippi wells were filed in April, April 6th of 1981 by Mr. Ingram. But the Alabama deed, which is the first deed in this section of the exhibit book, was not filed until October 19th of 1982.

Can you explain the reason for the delay in time there between executing the Alabama deed for the Wilkie well, and the time it was filed.

Mr. **Fairchild**. The lease that we got under the Wilkie well had a cloud on it, and I don't remember what the cloud was but it wasn't—it was a cloud, and I assumed waited till he got that cloud cleared up.

Ms. **Naughton**. And was it a cloud on your title? I mean, the company's title?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. So the company was not getting its money from the Wilkie well, right?

Mr. **Fairchild**. No.

Ms. **Naughton**. The oil company was just keeping it?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. All right. And when you finally got that cleared up, then you filed the conveyance to Judge Nixon, is that correct?

Mr. **Fairchild**. Well, Jarvis was handling that. I don't remember nothing about why it was delayed, was being filed.

Ms. **Naughton**. Now I want to ask you this question, Mr. Fairchild, and I preface it by understanding that you cannot value oil wells until they have actually been producing and you know what their production record is.

But based on all the information you had, when you picked out the wells, and the acreage, which you say was three, three and five—when you picked that out, what did you think they were worth?

Mr. **Fairchild**. Well, all the oil deals, they've got a high figure and a low figure, and I picked a low figure.

Ms. **Naughton**. So by picking the $9,500, which is what Judge Nixon came to owe you in the promissory notes for the interest, was that a low figure?

Mr. **Fairchild**. I would say that's a fair statement.

Ms. **Naughton**. If you were going to sell those same interests, at that time, to an outsider, someone you did not know, and you were not trying to please in any way—just an arm's-length transaction—what would you have charged?

Mr. **Fairchild**. If I was needing some money and going out and stretch the truth a little bit, I could have got a lot more money for them, but I just don't—we had a good income. We just don't sell it. Now, I've been offered prices for some oil deals, and to make hundreds of thousands of dollars on, but it turned out I didn't get nothing. It's just the nature of the oil business. It's just a gamble.

Ms. **Naughton**. I understand that, but stick with me for a minute.

When you say it was a low, $9,500 was probably a low figure, tell me the range, then, what you think those interests were worth. Three, three and five acres, when you picked——

Mr. **Fairchild**. Well, I could have got $25,000, $26,000, $27,000 I think without—you know.

Ms. **Naughton**. And that is indeed what you testified to at trial, isn't that correct? Somewhere between $26,000 and $28,000?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now if we can talk for a minute, I think, about the Wilkie well, is that the well for which you paid $200 per lease acre?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And there are seven royalty acres and a lease acre?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And Judge Nixon was conveyed three royalty acres, right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Now in that well you actually had a working interest, isn't that correct?

Mr. **Fairchild**. That's right.

Ms. **Naughton**. So that means that aside from your initial investment, the $200 per lease acre, you were pouring money into that project because you had a working interest, right?

Mr. **Fairchild**. I was paying for the drilling and completion, and the operation of the well.

Ms. **Naughton**. So your entire investment is a lot more than $200 per lease acre?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. So everything you made on the Wilkie well is not clear profit because you had expenses up front, is that correct?

Mr. **Fairchild**. Right.

Ms. **Naughton**. Now had you not, Wilkie well, had you not sold those interests to Judge Nixon, which by the time of his trial I think the royalties totalled over $60,000, would you have kept those interests for yourself and your company?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. You were not planning on selling them to anybody else, were you?

Mr. **Fairchild**. No.

Ms. **Naughton**. Were the royalty checks that you received from the oil companies for these, were these made out to Fairchild-Windham, to Fairchild Construction, or to you, personally? Do you remember how that broke down?

Mr. **Fairchild**. The Wilkie well I think was made out to—well, it's—was the construction company, and the other two, I don't recall how the checks was made out, but I think they were made out to Fairchild-Windham.

Ms. **Naughton**. But Fairchild-Windham only issued checks to Judge Nixon for the Ross well, correct? And the other two wells were paid out of a Fairchild Construction account. Is that correct?

Mr. **Fairchild**. I think that's correct, yeah.

Ms. **Naughton**. Now calling your attention, in that same book, to Tab 10, these are the checks to Judge Nixon from Fairchild-Windham for the Ross well.

Mr. Fairchild, if you could look at the first check to Judge Nixon, as you see, is somewhat larger. It is for $464, as opposed to the other checks that run $1.12. Then we have got $1.43. Then $11 and $5, and $3, $4. Is that first check, that $464, would that reflect the total that would have accrued from when the Ross well started producing in September of 1980 until February 1982 when these checks were issued?

Mr. **Fairchild**. Yes. I'd say that's——

Ms. **Naughton**. And that is why that would be substantially larger than the other checks?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now if we take you to the third page of that exhibit, and this is check number 2427, dated February 14th, 1983.

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Do you see that? And it is for $372.65, substantially larger than the others, right?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And at the bottom lefthand corner it says "four" and it says "Phillyaw royalty." Is Phillyaw another well that you own an interest in?

Mr. **Fairchild**. That I've got a working interest, yeah.

Ms. **Naughton**. Do you know why Judge Nixon would have been paid for an interest in another well?

Mr. **Fairchild**. My bookkeeper pays the royalty on the Phillyaw well, and on the Ross well and the Rogers well, and that's just—she just made a mistake. I don't recall Judge Nixon having nothing in that Phillyaw well.

Ms. **Naughton**. When you say "made a mistake," is this then a check he was not entitled to, or is this just a mistake in designating which well it is for?

Mr. **Fairchild**. Well, I don't know, but he wasn't entitled to nothing out of the Phillyaw well, and obviously the checks wouldn't have been near about that much.

Ms. **Naughton**. Right. But the check is, you know, almost 300 times, or 200 time what the other checks are, right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. All right. But you do not actually know if that was an error in the computation, or what, as we speak now?

Mr. **Fairchild**. Well, I'm confident it's an error, and I'm going to get back to the office and check that, and I think I'm going to find it and I'm going to bill Judge Nixon for the——

Ms. **Naughton**. Now I want to ask you a couple more questions about the notes, if I can.

Mr. **Edwards**. Ms. Naughton.

Ms. **Naughton**. Yes?

Mr. **Edwards**. We have some time problems at the moment, so we are going to have to, if this is an appropriate point, to recess this subcommittee hearing until 2:00 this afternoon.

[The subcommittee recessed at 12:43 p.m.]

AFTERNOON SESSION

Mr. **Edwards**. The subcommittee will come to order, and we will continue with——

Mr. **Sensenbrenner**. Mr. Chairman, I make a point of order against the subcommittee sitting. The House is in session. Under the 5-minute rule, there has been no permission to sit granted by the House of Representatives, and the subcommittee cannot sit under the rules of the House without such permission.

Mr. **Edwards**. Could the chair ask the gentleman the reason for his wanting to cancel the hearing?

Mr. **Sensenbrenner**. The gentleman from Wisconsin was not consulted about having these hearings, nor was any of the members of the Minority; nor was the gentleman from Wisconsin or any of the members of the Minority consulted about the scheduling of these hearings.

The chairman knows full well that we have had problems with scheduling in the past, and I informed the chairman about two weeks ago, that until we worked these matters out, I would not grant, as ranking Minority member, would not grant permission to sit when the House was in session, under the 5-minute rule.

Mr. **Edwards**. I understand that the gentleman's chief objection is that he does not like to work on Fridays and Mondays, is that correct?

Mr. **Sensenbrenner**. The gentleman from Wisconsin works in his district on Fridays and Mondays. The gentleman from Wisconsin is present in Washington on the days that the Democratic leadership of the House schedules votes.

Mr. **Edwards**. The gentleman understands that there are a number of committees that work Mondays and Fridays.

Mr. **Sensenbrenner**. Well, the gentleman from Wisconsin would like to have advance notice of when the subcommittee is meeting and that has not been forthcoming from the Majority staff.

The gentleman from California has deliberately scheduled hearings on dates when he knows that none of the three members of the Minority of this subcommittee will be present.

Mr. **Edwards**. Well, the gentleman makes it clear that he does not like to work Mondays and Fridays, is that correct?

Mr. **Sensenbrenner**. The gentleman was very busy in his direct on Friday and very busy in his district on Monday, and that is the schedule that has been set by the Majority leadership of the House of Representatives.

If the Majority leadership of the House of Representatives wants to have all of the members present and voting, they can schedule bills, and the gentleman from Wisconsin has got one of the highest attendance records in the House.

Mr. **Edwards**. I would point out for the record that we have always provided notice to all members of the subcommittee, and their staffs. Apparently sometimes communications do not get through in interoffice matters, but we have always complied. After 25 years, I would hardly not insist on notice to all members of the subcommittee.

Will the parliamentarian please check the House gallery and see if we are in the 5-minute rule.

Mr. **Sensenbrenner**. Mr. Chairman, my counsel informs me that the Majority staff asked for clearance for the Monday, June 20th legislative hearing, and my staff told your counsel that none of the Republicans would be in town because the Democratic leadership of the House of Representatives did not schedule votes that day, and the Majority staff went ahead and scheduled the hearing anyhow.

Furthermore, as far as the Monday, June 13th hearing was concerned, my office got notice the Friday beforehand, and since members have got to make arrangements to get on planes to get out here, it seems to me that if the Majority staff knew this hearing was taking place—and they did because they lined up witnesses—at least we could have been given the common courtesy of knowing when the hearing was going to be scheduled, at the time it was scheduled, and that courtesy was not forthcoming.

Now there are certain things that have to be done as a matter of comity to make the subcommittee work. That comity has not been forthcoming from the Majority side, and until it is forthcoming it will not be forthcoming from the Minority side.

Mr. **Edwards**. The gentleman understands that the taxpayers are paying a considerable amount of money for these hearings and that these private parties have put up considerable money out of their own pocket to be here today, but the gentleman still wants to stop the hearing, is that correct?

Mr. **Sensenbrenner**. The gentleman wants the subcommittee to follow the rules of the House of Representatives.

Mr. **Edwards**. So the gentleman from Wisconsin is going to blackmail this subcommittee into stopping the meeting on a technicality because he does not want to work on Fridays.

Mr. **Sensenbrenner**. Mr. Chairman, you never consulted the Minority about these hearings at all. Now before the first round of hearings in the impeachment of Judge Nixon, we had a meeting of all of the members of the subcommittee and you and Mr. Baron set forth the proposed plan on how we would deal with this question.

That included two days of hearings, which I attended from the beginning to the end, and Mr. DeWine was there most of the time, and Mr. Dannemeyer was there some of the time.

There was no consultation whatsoever with the Minority about the hearings that are scheduled for today and tomorrow and Friday. That we just heard out of the blue, after the three Republican members had already made their plans.

Now, you know, I cannot understand why the chairman decided it was important enough to get all of the members of the subcommittee together before the first round of hearings to talk about scheduling and how we were to approach this matter, but decided not to do so under this round of hearings.

Now I do not know if this is a stall or not, but every one of the Republican members of this subcommittee still has got their prerogatives under the rules of the House of Representatives to present a privileged resolution calling for the impeachment of Judge Nixon, and if this thing keeps on stalling without any consultations, I can guarantee you that this member will introduce such a resolution.

Mr. **Edwards**. For the record, we did provide the Minority with all of the required notice as soon as it was determined, and the chairman of the subcommittee has the obligation of deciding, with notice, to the other members, of the nature of the hearings and the scheduling of the hearings, and the witnesses to be asked to testify.

Apparently the House is in the 5-minute rule, which means that the gentleman's point of order is well-taken. The gentleman has refused to withdraw the point of order. We will reconvene this hearing at 3:00 o'clock this afternoon and we are recessed.

[Recess.]

Mr. **Edwards**. The subcommittee will come to order. Mr. Fairchild. Counsel Naughton will continue the questioning.

Ms. **Naughton**. Thank you, Mr. Chairman.

Mr. Fairchild, I just have a few more questions on the oil transaction, and then we will get on to the rest of your testimony. OK?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. When last we left, I was asking you about the promissory note that Judge Nixon executed for a total—the three notes for a total of $9,500 to Fairchild Construction. Do you know the notes of which I am speaking?

Mr. **Fairchild**. The what?

Ms. **Naughton**. The notes. Do you remember the notes?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. If I could ask your counsel to turn to Tab 5 of the committee's exhibit book, and the three notes are exhibited there.

Mr. Fairchild, when did you first see these notes?

Mr. **Fairchild**. I don't remember.

Ms. **Naughton**. Was it before or after you executed the deeds?

Mr. **Fairchild**. I don't remember but it would have been after, I'm almost positive.

Ms. **Naughton**. Would it have been a long time after, or a short time after?

Mr. **Fairchild**. Well, I mean—well, there, again, I don't remember exactly when it——

Ms. **Naughton**. OK.

Mr. **Fairchild**. When I was aware of it.

Ms. **Naughton**. Let me see if I can refresh your recollection, then. During Judge Nixon's trial—and this is at page 674, you testified that you did not see the notes until after the investigation had started in 1984.

Do you recall that?

Mr. **Fairchild**. Yes, and that's—now, I remember that, and I—that's the first time I remember——

Ms. **Naughton**. That is the first time you ever saw the notes?

Mr. **Fairchild**. Yeah, the first time I remember seeing them.

Ms. **Naughton**. So then, that is not until 1984, that you saw them, because the investigation starts some time in the spring. Remember, you were interviewed by the FBI in April of 1984?

Mr. Fairchild. Yeah, but that is the first time that I remember seeing them. I could have saw but that's the first time I remember it.

Ms. Naughton. And do you know when the notes actually went onto your books——

Mr. Fairchild. No.

Ms. Naughton. —as an account receivable?

Mr. Fairchild. No.

Ms. Naughton. Do you know how the note were assigned? In other words, one note is for $2,000, another note is for $3,000, and another note is for $4,500, but they do not specify which well they are for.

Do you know who made the decision as to how to allocate the money for each well?

Mr. Fairchild. No, I really can't say who did it. I would assume that Skip Jarvis asked me, or Billy Riley, and I'd told them, but I don't remember that, details of that.

Ms. Naughton. If I were to say that the notes did not go on your books until some time in 1982, would that be an accurate statement?

Mr. Fairchild. I don't know.

Ms. Naughton. Now if you could look at all three notes. I am just directing your attention to the beginning of the notes. And the entity lending the money, carrying the note, is Fairchild Construction Company. Do you see that?

Mr. Fairchild. Yes.

Ms. Naughton. But now, as we noted in reviewing the deeds, Fairchild Construction did not convey all the wells, the three wells to Judge Nixon, right? Fairchild-Windham actually conveyed one of the wells?

Mr. Fairchild. That's right.

Ms. Naughton. Isn't that right?

Mr. Fairchild. Yeah.

Ms. Naughton. Then how come all three notes are made payable to Fairchild Construction?

Mr. Fairchild. I can't answer that. We didn't make out—I think Carroll Ingram wrote the notes out. He probably assumed it was all coming from the construction company, and I may have told him that, but I can't answer that, truthfully. I just don't know.

Ms. Naughton. Is that an error, then, as far as you are concerned?

Mr. Fairchild. Yeah, as far as I'm concerned, it is an error.

Ms. Naughton. But you do not know how it came about?

Mr. Fairchild. That's right.

Ms. Naughton. And you will notice that the term of the note says that nothing needs to be paid, basically, until February 25th, 1985, when the entire balance, the unpaid balance and interest is due. Is that right?

Mr. Fairchild. Of 1983. February 25th, 1983.

Ms. Naughton. Yes. I am sorry. If I did not say that, I meant 1983.

Mr. Fairchild. Yeah.

Ms. Naughton. Now, was it your understanding, then, that Judge Nixon would not have to pay any money on the notes until he got paid royalties from the mineral interests you had conveyed?

Mr. Fairchild. Well, as I say, Carroll Ingram wrote this up and I just told him, and Jarvis, just to go ahead and work it up, and I wasn't—as I've said before, I wasn't concerned about when he was going to pay it.

Ms. Naughton. For the record, he starts receiving royalty checks in early 1982, around February of 1982, would that be right?

Mr. Fairchild. I think that's right.

Ms. Naughton. And then he started paying off the note shortly thereafter, correct?

Mr. Fairchild. I think that's correct.

Ms. Naughton. So you did not receive any payments for him until he received royalty payments from the wells, is that right?

Mr. Fairchild. I think that's correct, to the best of my memory.

Ms. Naughton. Now whose idea was it, Mr. Fairchild, to draw up notes?

Mr. Fairchild. Carroll Ingram's, the best of my memory, it was his idea.

Ms. Naughton. And why did Carroll Ingram tell you that you should have notes drawn up?

Mr. Fairchild. I don't remember Carroll specifically telling me, but somebody, him or somebody said that the judge had to make some disclosures, and it'd be better if we'd go ahead, and maybe he would draw up some notes.

Ms. Naughton. So it was more for his purposes than yours?

Mr. Fairchild. Huh?

Ms. Naughton. Was it more for Judge Nixon's purposes than yours, would you say?

Mr. Fairchild. I would say yeah; yeah.

Ms. Naughton. You did not request that the notes be drawn? You did not insist on written notes, did you?

Mr. Fairchild. I don't remember insisting on it, but if Carroll had asked me about it, did I want notes, I would have said yes.

Ms. Naughton. To the best of your recollection, then, were the notes drawn after the deeds had been filed?

Mr. Fairchild. I would think that was so, yeah.

Ms. Naughton. Now I want to direct your attention to Tab 11, and this is at the end of Tab 11's exhibits, the very last page. It is marked Defendant's Exhibit 24. Do you see that check from Judge Nixon to W.R. Fairchild Construction Company?

Mr. Fairchild. Yes.

Ms. Naughton. And it is dated August 20, 1984?

Mr. Fairchild. Yeah.

Ms. Naughton. And that is after you testified in grand jury, right?

Mr. Fairchild. Yes.

Ms. Naughton. And after the investigation had started, you were interviewed by the FBI, you testified in grand jury, right?

Mr. Fairchild. Yeah.

Ms. Naughton. You knew there was an investigation?

Mr. Fairchild. Yeah.

Ms. NAUGHTON. And did you instruct the people in your company to check the books, and make sure that the transaction with Judge Nixon was all straight, and recorded properly?

Mr. FAIRCHILD. I don't remember how that came about. The FBI was in there checking on it, where they—or Billy Riley found that this, owed this interest. I don't know.

Ms. NAUGHTON. But at some point in August you received a check from Judge Nixon for the amount of $951.10, is that correct?

Mr. FAIRCHILD. Yeah. I see a photostat of it here.

Ms. NAUGHTON. All right. And the total notes that he had signed were for $9,500 at 10 percent interest per annum, right?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And therefore, the interest on the notes between 1980 and 1981 would have been $950, is that right? Ten percent of $9,500?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Now looking at that check, in the upper right-hand corner it is stamped "Not sufficient funds." Do you know if that check bounced?

Mr. FAIRCHILD. I assume it did, but I don't—I can't recall it being brought to my attention.

Ms. NAUGHTON. Nobody ever came back and told you that it was not honored at the bank?

Mr. FAIRCHILD. Well, they probably did, but there again, it's been so long that I just don't——

Ms. NAUGHTON. Do you remember receiving a second check that was good?

[Witness confers with his counsel.]

Mr. FAIRCHILD. Well, this check has got "processed and paid" stamped on it.

Ms. NAUGHTON. So do you know what that stamp, "Not sufficient funds" means?

Mr. FAIRCHILD. There wasn't enough money in the bank when it was presented, I would—that's my understanding.

Ms. NAUGHTON. But at any rate, you are not aware of any particular problem with this check?

Mr. FAIRCHILD. No. Well, I know there was some discussion going on about it, just—you know—just that it was mentioned, but no serious problem, no.

Ms. NAUGHTON. What kind of discussion?

Mr. FAIRCHILD. Well, I don't remember. I was aware of the, being a—I thought it was miscalculation on the interest, that was what they was trying to pay at the time. It didn't—you know—I wasn't concerned about it, and I just don't get into them details in the office.

Ms. NAUGHTON. Now, as I said, the records indicate that Judge Nixon began receiving royalty payments in about February of 1982. Shortly after that time, did he pay you a visit at your office?

Mr. FAIRCHILD. Yes. Yeah, some time after that he paid me a visit.

Ms. NAUGHTON. Was that the first time he had been to your office?

Mr. FAIRCHILD. I don't think so. I think he had dropped by there by himself, or him and Carroll before then. Well, I'm almost sure.

Ms. NAUGHTON. Did you discuss the oil deal at the previous time he might have stopped by?

Mr. FAIRCHILD. I don't remember if we did.

Ms. NAUGHTON. Now on this particular occasion, do you remember him coming around and thanking you for putting him in the oil deal?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. What else did he say?

Mr. FAIRCHILD. He says if I can ever help you I will, and if I can't, I'll just tell you I can't.

Ms. NAUGHTON. And what was your response to that?

Mr. FAIRCHILD. Well, I'd taken that to mean that he was saying, Wiley, now if you ask me something unreasonable I'm not going to do it.

Ms. NAUGHTON. And if you asked him something reasonable?

Mr. FAIRCHILD. I figured he would do it.

Ms. NAUGHTON. Did you figure, for instance, asking him to put in a good word for Drew, if Bud Holmes was reasonable?

Mr. FAIRCHILD. Yes. I felt that was reasonable.

Ms. NAUGHTON. During the course of your relationship with Judge Nixon, did you discuss him going into other oil deals?

Mr. FAIRCHILD. I could have, but I don't remember.

Ms. NAUGHTON. What about the Board of Education oil deal? Do you remember testifying about that at trial?

Mr. FAIRCHILD. No. I don't remember testifying it, but if you can refresh my memory I'll——

Ms. NAUGHTON. Well, let me just ask you this: Was that a deal you considered putting him in but it turned out not to be a very profitable thing, so you decided not to? Would that be an accurate statement?

Mr. FAIRCHILD. I just don't remember.

Ms. NAUGHTON. Now did there come a time, after Judge Nixon's visit to the office that you just described—did there come a time when you became upset about your son's case and how it was being handled by Bud Holmes?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And why were you upset?

Mr. FAIRCHILD. Well, I thought Bud Holmes was trying to blackmail me.

Ms. NAUGHTON. How blackmail you? What do you mean?

Mr. FAIRCHILD. Well, shake me down, or whatever you want to call it, trying to get some more money out of me.

Ms. NAUGHTON. You mean before Drew's case would be settled?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And how did you think that was occurring? How was he doing that?

Mr. FAIRCHILD. Well, he just hadn't done what he said he would do, what Bill Porter said he would do.

Ms. NAUGHTON. Drew had not yet been sentenced and gotten probation, or anything, right?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. Now did you receive some visitors named Bob Royals—did Bob Royals come to visit you?

Mr. FAIRCHILD. Yeah.

Ms. **NAUGHTON**. All right. Did he tell you he had talked to Porter?

Mr. **FAIRCHILD**. Yes.

Ms. **NAUGHTON**. Could you describe that visit to us, please.

Mr. **FAIRCHILD**. He came in there and said he'd been talking to Bill Porter, and that Bill Porter said if Drew would get up off his money nothing would ever come of his case, and Bob says, well, Drew don't have no money, and he says, well, his old man's got some. He says, yeah, but that's his old man's; it's not Drew's.

Bill Porter said if he knew his son was going to get his tail in the crack he'd get up off of his money. And I says, Bob, I got the message, clear, and the answer is not no, it's hell no.

Ms. **NAUGHTON**. And what was the message?

Mr. **FAIRCHILD**. Well, I thought it was—Bud Holmes was trying to get some more—blackmail. That's what I call it.

Ms. **NAUGHTON**. Now you say you were upset about this, right?

Mr. **FAIRCHILD**. Yeah.

Ms. **NAUGHTON**. Did you decide to talk to anybody about it?

Mr. **FAIRCHILD**. The best I remember, I asked Carroll to call Judge Nixon.

Ms. **NAUGHTON**. Why?

Mr. **FAIRCHILD**. Well, I wanted to talk to him.

Ms. **NAUGHTON**. Why?

Mr. **FAIRCHILD**. The way that—the unfairness—that the way Drew's case had been handled.

Ms. **NAUGHTON**. And did Carroll Ingram get in touch with Judge Nixon?

Mr. **FAIRCHILD**. No.

Ms. **NAUGHTON**. Did you do anything about that?

Mr. **FAIRCHILD**. Well, the best I remember, Carroll didn't. But anyway, I'm not sure, but I think I called Judge Nixon's secretary and told him I wanted to see him.

Ms. **NAUGHTON**. Do you know whether that message got conveyed to him?

Mr. **FAIRCHILD**. Well, I know he came up to see me.

Ms. **NAUGHTON**. And did he come by your office?

Mr. **FAIRCHILD**. Yes.

Ms. **NAUGHTON**. And what did you tell him?

Mr. **FAIRCHILD**. Well, I told him how—that Bud was treating my son, and I says, now my son is guilty as hell, but he's no more guilty than Bob Royals. If you're going to prosecute him, prosecute Bob Royals, and you won't hear a word out of me.

Ms. **NAUGHTON**. Did you tell the judge that you thought Bud Holmes was just blackmailing him, blackmailing you?

Mr. **FAIRCHILD**. I don't know. I was real upset and I was real mad, and when I get that way I can't remember what I said.

Ms. **NAUGHTON**. Did you make it clear to the judge that who you were mad at was Bud Holmes?

Mr. **FAIRCHILD**. Yes.

Ms. **NAUGHTON**. And why did you tell Judge Nixon this, Mr. Fairchild?

Mr. **FAIRCHILD**. Well, friends—just that friends helps friends.

Ms. **NAUGHTON**. And so you wanted him to help you with this problem?

Mr. FAIRCHILD. Well, I wanted him to see that justice was done. I didn't ask him to talk to Bud Holmes and help Drew out. If he's going to keep on hounding my son, get on Bob Royals. He's just as guilty.

Ms. NAUGHTON. But Judge Nixon was a Federal judge, right?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And the case was in State court, right?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. How did you want Judge Nixon to help with Drew's—to see that justice was done?

Mr. FAIRCHILD. Well, I knew that he was a good friend of Bud Holmes.

Ms. NAUGHTON. So did you hope that he would talk to Bud Holmes?

Mr. FAIRCHILD. Yeah. I hoped that he'd tell him just what I'd said, and that is, if he's going to treat my son that way, go ahead and indict this other fellow. He's just as guilty.

Ms. NAUGHTON. And do you think you made that message plain to Judge Nixon?

Mr. FAIRCHILD. Oh, I sure did.

Ms. NAUGHTON. You spoke your mind?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. What did Judge Nixon say?

Mr. FAIRCHILD. I don't remember a word that he said. He just—he probably said something, but he mostly just listened.

Ms. NAUGHTON. Did he say he would help you?

Mr. FAIRCHILD. If he did, I don't remember.

Ms. NAUGHTON. Did he say he couldn't help you?

Mr. FAIRCHILD. No, if he'd of said that, I would remember that. He didn't say he couldn't help.

Ms. NAUGHTON. Was anybody with you during this conversation?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. Do you recall what time of the day it was, approximately?

Mr. FAIRCHILD. I couldn't say for sure, but I'm 99 percent that it was about 3:00 o'clock in the evening. Between 2:00 and—I'd say between 2:00 and 4:00. But it could have been in the morning. Well, just, that's the best of my memory.

Ms. NAUGHTON. So about 2:00 or 3:00 in the afternoon?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Did you hear from Judge Nixon later that evening?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. What happened?

Mr. FAIRCHILD. He called me on the phone, and he says, "Wiley, you know that man that we was talking to this thing?" and I says, "Yeah." He says, "I'm at his house and everything's going to be handled to your satisfaction." And I thanked him for it, and then Bud Holmes got on the phone and says, "Wiley, when this man asks me to do something, I don't ask no questions, I go ahead and do it."

Ms. NAUGHTON. Anything else?

Mr. FAIRCHILD. Could have been something else he said, but I don't—I can't think of it right now.

Ms. NAUGHTON. Do you know whether or not Judge Nixon thanked you, again, for putting him in the oil deal?

Mr. FAIRCHILD. If he'd done it that night, I don't remember, and I don't remember but one time him thanking me for it.

Ms. NAUGHTON. When Judge Nixon said to you on the phone, "You know that man we were talking about today," did you understand him to mean Bud Holmes?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Did you have any indication of why he did not say Bud Holmes?

Mr. FAIRCHILD. No. It never crossed my mind.

Ms. NAUGHTON. Did you tell anybody about the call, after it happened?

Mr. FAIRCHILD. I'm sure I did, and I would have probably have told Carroll Ingram about it.

Ms. NAUGHTON. Before we get to that, I have one more question about the call itself. Are you sure that when you got to the phone, that the first voice on the line was Judge Nixon and not Bud Holmes?

Mr. FAIRCHILD. I don't remember it that way. What I remember, that it was Judge Nixon.

Ms. NAUGHTON. And then Bud Holmes?

Mr. FAIRCHILD. And that's the way I remember. It could have been the other way but I don't think so.

Ms. NAUGHTON. Well, think about it carefully.

Mr. FAIRCHILD. Well, I don't remember it, because I remember it just like I'm telling.

Ms. NAUGHTON. Just like you told me?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Do you remember what time of the evening, approximately, this call came in?

Mr. FAIRCHILD. About 7:00 o'clock.

Ms. NAUGHTON. And had you had a few drinks before then, Mr. Fairchild?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Do you know how many? Can you guess?

Mr. FAIRCHILD. Six jiggers.

Ms. NAUGHTON. Six what?

Mr. FAIRCHILD. Six drinks. Six jiggers.

Ms. NAUGHTON. Jiggers?

Mr. FAIRCHILD. Like you get at the bar.

Ms. NAUGHTON. Was your recollection hazy at that point, or were you understanding what was being said?

Mr. FAIRCHILD. Well, I was understanding.

Ms. NAUGHTON. As you sit here now, can you recollect that conversation fairly clearly?

Mr. FAIRCHILD. Yeah. I just repeated, word for word, and that's what I said at the trial, and at the grand jury.

Ms. NAUGHTON. Now after that call happened, what did you figure would happen with Drew's case?

Mr. FAIRCHILD. Well, he'd been kicked around so much, I didn't know what'd happen, and I made my son, Drew, sell everything he can to pay Bill Porter his money. And I just wanted to see that they get off his back, or indict Bob Royals.

Ms. NAUGHTON. But here is my question. After you got the call from Judge Nixon, and then Bud Holmes, and they are both telling you that the case will be worked out to your satisfaction, or words in that vein, what did you understand that to mean?

In other words, what did you think was going to happen with the case?

Mr. FAIRCHILD. Well, I thought they'd take care of his case.

Ms. NAUGHTON. What do you mean by that?

Mr. FAIRCHILD. Well, that he'd go on and live up to his agreement, Bud Holmes would.

Ms. NAUGHTON. So Drew would not have to go to jail?

Mr. FAIRCHILD. That's right.

Ms. NAUGHTON. And maybe pay a fine, and it would be over with?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. All right. Do you remember, did either of them tell you the case would be passed to the files? Did they use those words?

Mr. FAIRCHILD. I don't remember them saying that that night.

Ms. NAUGHTON. Now after this call, some time thereafter, did you discuss the call with Drew, that you had received this word?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. What did you tell him?

Mr. FAIRCHILD. Well, I just told him about the call.

Ms. NAUGHTON. Did you tell him that his case would be worked out now?

Mr. FAIRCHILD. I don't remember just telling him in that words. I just told him about the conversation.

Ms. NAUGHTON. Did Drew know about your oil transactions with Judge Nixon?

Mr. FAIRCHILD. Not at the time that the deal was consummated, for some time. I don't think he knew about it until the investigation started. But he could have because he'd come by the office and worked in and out of there. He could have known about it. But I don't know when he found out.

Ms. NAUGHTON. You do not recall discussing it with him during that period of time?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. Now in December of 1982, Judge Weldy signed an order passing Drew's case to the file, the inactive file. Did you become aware of this order?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. How did it come to your attention?

Mr. FAIRCHILD. Carroll Ingram brought a copy out to my office, and says "I've got you a Christmas present." That's how I knew about it.

Ms. NAUGHTON. Did Carroll say who had given it to him?

Mr. FAIRCHILD. I don't remember if he did, or not.

Ms. NAUGHTON. What did you do with it?

Mr. FAIRCHILD. Huh?

Ms. NAUGHTON. What did you do with it?

Mr. FAIRCHILD. I called Drew's wife and told her I had it, and she said she wanted to come over there and pick it up, and she did. I either called Drew or his wife, but anyway, she came over to the office and picked it up.

Ms. NAUGHTON. Did you see this order, passing it to the inactive file, as a result of your conversation with Judge Nixon, and then the phone call you got from Bud Holmes's farm?

Mr. FAIRCHILD. Repeat the question.

Ms. NAUGHTON. Did you see the order, passing it to the inactive file, as related to, or as the result of your conversation with Judge Nixon, and his subsequent telephone conversation between Judge Nixon, Bud Holmes and yourself?

Mr. FAIRCHILD. Well, I figured that had some bearing on it, yes.

Ms. NAUGHTON. Now about 33 days later, in January of 1983, there is a new judge on the bench, Judge McKenzie, right?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And the case is restored to the active file, is that correct?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. When it got restored to the active file, did you do anything about it?

[Witness confers with his counsel.]

Mr. FAIRCHILD. I don't remember doing anything.

Ms. NAUGHTON. You were upset, weren't you?

Mr. FAIRCHILD. Huh?

Ms. NAUGHTON. Weren't you upset that it had gone back on?

Mr. FAIRCHILD. Oh, yeah, I was upset.

Ms. NAUGHTON. But you didn't talk to anybody, or do anything about it?

Mr. FAIRCHILD. I don't remember.

Ms. NAUGHTON. Now then, we will skip ahead. The next event that happens is in December of 1983, one year passes, still nothing is done with Drew's case. Bill Porter dies in the airplane crash in November of 1983, and then in December of 1983, Bud Holmes is leaving office as district attorney.

Do you recall that?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And did there come a time at which you complained to Carroll, and you were about to go to the press regarding what you thought was a blackmail scheme against you?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Did you tell Carroll that you would go and talk to the press about Bud Holmes's attempt to blackmail you?

Mr. FAIRCHILD. Well, I threatened to go to the TV station.

Ms. NAUGHTON. And did you assume that Carroll would tell Bud Holmes that?

Mr. FAIRCHILD. Yes.

Mr. NAUGHTON. Did you get a call from Bud Holmes shortly thereafter?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. What did Bud say?

Mr. FAIRCHILD. He called the office and when I walked in the office, said I got a call from Bud Holmes, and he wanted to see you. I says, well, if he calls back tell him I'm not here. I don't want to talk to him.

And it was about 10 minutes later, somebody came up and said Bud Holmes and Judge McKenzie's up there to see you. Judge McKenzie.

Ms. **Naughton**. So Bud Holmes brought Judge McKenzie?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Do you remember what time of the morning this was?

Mr. **Fairchild**. It was early.

Ms. **Naughton**. Was it like 6:30?

Mr. **Fairchild**. No; no.

Ms. **Naughton**. 7:00?

Mr. **Fairchild**. It'd have been more like between 7:00 and 8:00.

Ms. **Naughton**. Did you know Judge McKenzie was going to come?

Mr. **Fairchild**. No.

Ms. **Naughton**. And who did the talking at this meeting?

Mr. **Fairchild**. Bud.

Ms. **Naughton**. What did he say?

Mr. **Fairchild**. He says—I don't remember, was he talking to me, or whether—the best I remember, he says, "Don't let Drew go to the press on this thing. The press just gets things all screwed up and out of proportion." Says "Ain't nobody after Drew; don't worry about it; ain't nothing going to happen to him."

Ms. **Naughton**. How could he tell you that if he was leaving office? In other words, did he say he had put in the word, or he was going to handle the case before he left?

Mr. **Fairchild**. Well, there was Bud and there was the judge sitting right by him, and I don't remember what we said, but the judge didn't open his mouth, the best I remember.

Ms. **Naughton**. So it made an impression on you that the sentencing judge was standing right there?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Did he challenge Bud or correct him or say——

Mr. **Fairchild**. No; no.

Ms. **Naughton**. —he was going to give Drew a lot of time, or anything like that?

Mr. **Fairchild**. No.

Ms. **Naughton**. Now is Judge McKenzie one of the judges that you had contributed money to for his campaign?

Mr. **Fairchild**. What?

Ms. **Naughton**. Did you ever contribute, indirectly or directly, to Judge McKenzie's campaign? He ran against Weldy.

Mr. **Fairchild**. Well, the best of my memory is, yeah, I did, indirectly.

Ms. **Naughton**. Did he know that?

Mr. **Fairchild**. I don't know whether he knew it, or not.

Ms. **Naughton**. Now, I am going to go on to another track here and discuss with you the investigation that was conducted by the Department of Justice on these matters that we have discussed, beginning in the spring of 1984. OK?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now first I want to ask you about a man named John Baltar. Did he work for you?

Mr. **Fairchild**. Yes.

Ms. Naughton. And did he work for you in the spring of 1984?

Mr. Fairchild. Yes.

Ms. Naughton. What kind of work does he do?

Mr. Fairchild. Public relations, and a legislative lobbyist.

Ms. Naughton. Now did you ask him to go to the FBI for you and complain about this blackmail scheme you thought Bud Holmes had concocted against you?

Mr. Fairchild. Yes.

Ms. Naughton. And did he do so, to the best of your knowledge?

Mr. Fairchild. Yes.

Ms. Naughton. Did you know at that time, when you told Baltar to go to the FBI—did you know that the FBI was conducting an investigation into Drew's case and what had been going on?

Mr. Fairchild. No.

Ms. Naughton. So this was just your own idea, out of the blue?

Mr. Fairchild. Yeah.

Ms. Naughton. Did the FBI then interview you on April 10th, 11th,.18th and 19th of 1984?

Mr. Fairchild. Yes.

Ms. Naughton. And they asked you about the history of Drew's case?

Mr. Fairchild. Yeah.

Ms. Naughton. And you did not tell them—am I correct?—about a conversation you had with Judge Nixon or the telephone call later that day from Judge Nixon and Bud Holmes, from Bud Holmes's farm, is that correct?

Mr. Fairchild. No, I don't—I didn't tell.

Ms. Naughton. You did not tell the FBI. Why didn't you tell the FBI about that call?

Mr. Fairchild. Well, it didn't come to my mind. It just didn't come to——

Ms. Naughton. Now you also never mentioned, in the first two interviews, and not until the third interview when the FBI mentioned, your financial relationship with Judge Nixon. That is, the oil deal that you had put him in. Is that correct?

Mr. Fairchild. I don't—I can't deny that's not the truth.

Ms. Naughton. They were the first ones to bring that up, right?

Mr. Fairchild. Yes.

Ms. Naughton. How come you did not mention it to them first?

Mr. Fairchild. Well, I didn't place no significance on the deal, you know, as having any relationship, any relation to Drew's case.

Ms. Naughton. Now you also testified in grand jury, on July 19th and 20th of 1984, the first time—remember that?

Mr. Fairchild. Yeah.

Ms. Naughton. And you did not mention the phone call or the meeting with Judge Nixon regarding Drew's case during that testimony, did you?

Mr. Fairchild. No.

Ms. Naughton. And why was that, Mr. Fairchild?

Mr. Fairchild. I simply didn't remember it at that time.

Ms. Naughton. Now, eventually, by September of 1984, you were indicted, correct?

Mr. Fairchild. Yeah.

Ms. NAUGHTON. All right. And you are indicted for, count one, giving an illegal gratuity to Judge Nixon, is that correct?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And also for perjury, a false statement before a grand jury, is that right?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And eventually, on or about November of 1984, you entered into an agreement with the prosecutor, with the Government, on your case, correct?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And you agreed to plead guilty to count one, the illegal gratuity, if they dropped count two, correct?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Was that a part of the agreement?

Mr. FAIRCHILD. Yeah, that's part of it.

Ms. NAUGHTON. All right. And another part of it was that you agreed to cooperate with the Government, tell the truth at any trials they asked you to testify at, is that correct?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And another part of it included—let me ask you this: Did the Government, as a part of that agreement, agree not to recommend any time for you?

Mr. FAIRCHILD. Mr. Weingarten said if he found there was no connection between the oil and gas deeds and the gratuity, he'd drop the gratuity charge.

Ms. NAUGHTON. We will get to that.

Mr. FAIRCHILD. OK.

Ms. NAUGHTON. What I am asking you now is: What did they tell you about a sentence, what you would be sentenced to?

Mr. FAIRCHILD. I don't remember the details, and I was relying too much on my counsel, but I was lead to believe I wouldn't have to serve no time, and just maybe get a—well, I just didn't know. I thought I'd get out as light as it could possibly be.

Ms. NAUGHTON. This is kind of important, though. Were you led to believe that by your own attorney, or did Reid Weingarten make you any sort of guarantee or promise of any type, that you would not spend any time in jail?

Mr. FAIRCHILD. No, when he'd say something he'd always phrase it, "I can't guarantee it."

Ms. NAUGHTON. That is up to the sentencing judge, right?

Mr. FAIRCHILD. Huh?

Ms. NAUGHTON. That was up to the sentencing judge, right?

Mr. FAIRCHILD. Yeah; yeah.

Ms. NAUGHTON. In effect the judge did give you some time to serve, didn't he?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. What did you end up serving?

Mr. FAIRCHILD. Well, it was 30 nights in a halfway house. It was two months, but that's what I wound up staying.

Ms. NAUGHTON. And was the halfway house in Jackson, Mississippi?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And you would stay weekends?

Mr. FAIRCHILD. No. I didn't.

Ms. **Naughton**. Nights?

Mr. **Fairchild**. Just five nights a week.

Ms. **Naughton**. And did you pay a fine?

Mr. **Fairchild**. $10,000.

Ms. **Naughton**. Were you sentenced before you testified at Judge Nixon's trial?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And you had already served your sentence?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. I want to back-pedal for a minute, and ask you: After you reached your agreement with the Government, did you testify again in grand jury, in November of 1984?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And did you testify during that grand jury about a guy named Preacher Shows?

Mr. **Fairchild**. Shows. Preacher Shows.

Ms. **Naughton**. Shows?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And Preacher Shows had a son who was a doctor who had been convicted of giving illegal prescriptions, right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And that was in Federal court, right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now were you under the impression at the time, that Judge Nixon handled that case?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And did this figure into your thinking when you were debating, at first, whether or not to put Judge Nixon in an oil deal?

Mr. **Fairchild**. No, I didn't connect them together.

Ms. **Naughton**. Did you testify at grand jury about the Preacher Shows case?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. What did you tell the grand jury, the best you can recall?

Mr. **Fairchild**. I just don't remember, but Preacher Shows came to me and wanted some help, and I sent him to Bud Holmes.

Ms. **Naughton**. He wanted some help with his son's case?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Had his son been sentenced to 18 months or——

Mr. **Fairchild**. No, he hadn't been——

Ms. **Naughton**. Not been sentenced yet?

Mr. **Fairchild**. I don't think he had. He'd been tried and convicted. No, I don't remember what was the status with the case, but he just wanted some help.

Ms. **Naughton**. For his son?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. And why did you send him to Bud Holmes?

Mr. **Fairchild**. Preacher Shows wanted me—he thought I could do something with—you know—with one of his Senators, or the Congress. And I told him no, that just—that didn't work no longer like that, and I sent him to Bud Holmes.

Ms. NAUGHTON. Why to Bud Holmes? Bud Holmes was a State D.A. at the time, right? Or actually, was a private lawyer at the time, wasn't he?

Mr. FAIRCHILD. Yeah, a private lawyer.

Ms. NAUGHTON. Why did you send him to Bud Holmes?

Mr. FAIRCHILD. Well, he's good in cases like that.

Ms. NAUGHTON. All right. Was part of your reasoning for sending him to Bud Holmes was that you knew Bud Holmes and Judge Nixon were close friends?

Mr. FAIRCHILD. Yeah; yeah.

Ms. NAUGHTON. Did Preacher Shows show you a cancelled check for $10,000 to Bud Holmes?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And what did you understand this check to represent?

Mr. FAIRCHILD. Retainer for Preacher Shows's son.

Ms. NAUGHTON. Did you consider this, or were you told that this was any kind of payoff?

Mr. FAIRCHILD. I don't remember what Preacher Shows told me at the time. If you've got something in my grand jury testify to refresh my memory, well, I——

Ms. NAUGHTON. Let's look at page 21 of your grand jury testimony. Let's actually go to page 22. And your answer is: "Well, when he asked me if I had any connections in Washington, I said no, and I says who was the judge, and he says Judge Nixon, and I says well, Bud Holmes flies him to Las Vegas and out to Vail, Colorado, and they are big buddies. Go see Bud Holmes. And they did."

"He was glad to receive them and—"

Question: "Did he ask anything from Dr. Shows' father in order to make the intervention possible?"

"Yeah, $10,000." OK? To intervene. Did you mean "intervene", Bud Holmes and Judge Nixon? That Bud Holmes would intervene?

Mr. FAIRCHILD. Yeah, that's a fair statement.

Ms. NAUGHTON. And you say: "Yes, I saw the cancelled check. It developed after he done got out. He got, as I understand it, the sentence reduced." So, did you understand from what Preacher Shows was telling you, that by giving Bud Holmes the $10,000, that somehow he got his son's sentence reduced? Was that your understanding?

Mr. FAIRCHILD. I understood that from Preacher Shows, yes.

Ms. NAUGHTON. Now Mr. Fairchild, have you since learned that Judge Nixon did not handle that case?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. DR. SHOWS' case. When did you learn that?

Mr. FAIRCHILD. I don't remember.

Ms. NAUGHTON. At the time you testified in grand jury, though, did you think that it was Judge Nixon who handled the case?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Now getting back to your plea agreement with the Government, did you seek from the Government to get either a complete dismissal or a misdemeanor, or lesser charges, if you cooperated with them?

Mr. FAIRCHILD. I don't think my attorneys tried to make a bargain with Weingarten at all.

Ms. NAUGHTON. Did there come a time when you went and met with Mr. Weingarten and told him everything you knew?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And was this in order for you to get a better deal on your case?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And did you tell him at that time about the phone call from the farm?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And was that the first time you had told anybody employed by the Federal Government about the phone call?

Mr. FAIRCHILD. I think I had told—or Weingarten had said he needed a smoking gun, and I had told my attorneys about the phone call, and they says, well, that's your smoking gun.

Ms. NAUGHTON. So did Weingarten say he needed a smoking gun in your presence?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And what did you understand you would get if you gave him a, quote, "smoking gun"?

Mr. FAIRCHILD. Well, I just thought that I'd practically get off free.

Ms. NAUGHTON. You mean a dismissal of the charges, of all the charges?

Mr. FAIRCHILD. I thought eventually he'd find out that there wasn't no connection between the oil and gas deals, yeah, and would drop the charge.

Ms. NAUGHTON. And is that what happened?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. He did not drop them, did he?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. So you told him about the phone call and he basically did not change the deal?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. You still pled to a felony?

Mr. FAIRCHILD. Huh?

Ms. NAUGHTON. You still pled to a felony?

Mr. FAIRCHILD. Yeah, on the advice of my attorneys.

Ms. NAUGHTON. Now, after you pled guilty and agreed to testify in Judge Nixon's trial, was part of this agreement that you would tell the truth at trial?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. Now I want to get back to the issue of—you mentioned that Mr. Weingarten represented to you that he would dismiss the charges, the gratuity charge, if he found there was no connection between the oil deal for Judge Nixon and Drew's case.

Is that your understanding?

Mr. FAIRCHILD. He led me to believe that he would, yeah. I don't remember the—I can't quote the words he said, and the exact words, but he led me to believe, and I did believe.

Ms. NAUGHTON. Now Mr. Fairchild, based on that belief you have, is there anything you said at Judge Nixon's trial, that you said, that was false or wrong, or that you did to please the prosecutor, hoping that he would then dismiss the case against you?

Mr. FAIRCHILD. To the best of my memory, no. I told the truth.

Ms. NAUGHTON. Now did Mr. Weingarten discuss with you the possibility of a pardon?

Mr. FAIRCHILD. Yeah. There was a lot of discussions, and he said he'd do everything he could.

Ms. NAUGHTON. Now was this before or after you testified at Judge Nixon's trial?

Mr. FAIRCHILD. This was before.

Ms. NAUGHTON. And when he said he'd do anything he could, did he say he would get you a pardon or he would make efforts to get you a pardon?

In other words, did he explain how a pardon worked here?

Mr. FAIRCHILD. He didn't promise to get a pardon. He just led me to believe he'd do everything he could to help me.

Ms. NAUGHTON. And did you also discuss Drew's case with Reid Weingarten? By then the Federal Government had indicted Drew as well, right?

Mr. FAIRCHILD. Yes.

Ms. NAUGHTON. And Reid was handling that case, correct?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. Mr. Weingarten was handling that. Did he ever promise that he would seek leniency for Drew or dismiss his case or show any leniency towards Drew if you would testify a certain way at Judge Nixon's trial?

Mr. FAIRCHILD. Well, what he said, he'd do what he could to help Drew.

Ms. NAUGHTON. But did that depend upon what you said at trial, or was that just a representation he was making to you about how he would handle Drew's case?

Mr. FAIRCHILD. Well, he said just what I said a while ago. He said he'd do everything he could to help.

Ms. NAUGHTON. Did he ever tell you that Drew's case, how Drew's case ended up, would depend on your testimony at Judge Nixon's trial?

Mr. FAIRCHILD. No, he didn't put it that way. He led me to believe if I got up there and told the truth, that he would do everything he could to help Drew, and I believed he would.

Ms. NAUGHTON. Again, did anything that the Government attorney represented to you regarding Drew's case, or a pardon for either you or Drew—did any of those representations cause you to testify falsely or in a misleading manner in Judge Nixon's trial?

Mr. FAIRCHILD. No.

Ms. NAUGHTON. Did the Government attorney ever write a script for you to follow as your testimony?

Mr. FAIRCHILD. Baltar went up to the Howard Johnson hotel and picked them up, and they came up down to our office and we discussed, and Baltar made some notes, and then Baltar got my secretary to type them up, and there was some questions and answers.

Ms. NAUGHTON. So these are notes that Mr. Baltar wrote, is that correct?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And he was working for you at the time?

Mr. FAIRCHILD. Yeah.

Ms. NAUGHTON. And he had them typed up and gave them to you, is that right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. To your knowledge, did Mr. Weingarten write any of those notes?

Mr. **Fairchild**. Well, he was in the room when Mr. Baltar was making the notes to be typed up.

Ms. **Naughton**. Did you know if Reid Weingarten saw those notes?

Mr. **Fairchild**. I don't know whether he saw them after they were typed up, or not.

Ms. **Naughton**. Do you know if he saw them before they were typed up? Actually read them?

Mr. **Fairchild**. Huh?

Ms. **Naughton**. Do you know if he actually read them before they were typed up?

Mr. **Fairchild**. I don't know whether he—Baltar was down there helping out all he could with the trial, and I assumed that Weingarten saw, after it was typed up. Baltar carried a copy of it with him and I had a copy with me at all times from there until——

Ms. **Naughton**. OK. Did Mr. Weingarten ever tell you to use those notes while you were testifying? Did he ever tell you that?

Mr. **Fairchild**. No, not that—Mr. Weingarten was sitting there and Baltar was sitting right over there, and taking the notes down, and here's the questions I'm going to answer—ask you, and Baltar said, well, the answer would be—or he'd ask me what the answer was. And you know, we was all three there when all—when Baltar made all them notes.

Ms. **Naughton**. Was there anything in those notes, that you can recall now, that was not true?

Mr. **Fairchild**. No.

Ms. **Naughton**. At any time, Mr. Fairchild, did anyone for the Government, whether it be FBI or the Department of Justice, instruct you to lie or in any way change your testimony at Judge Nixon's trial?

Mr. **Fairchild**. Repeat the question.

Ms. **Naughton**. At any time did any Government attorney or member of the FBI instruct you to lie, or in any way testify against what your recollection was at Judge Nixon's trial?

Mr. **Fairchild**. If they did, I don't remember it.

Ms. **Naughton**. I have to ask about one more thing. You had mentioned—I want to go back for a minute. After you fired Skip Jarvis, he came around about six months later or so, didn't he, and he was actually wired up? That is, the FBI had put wire recording devices on him so he could pick up the conversation. Is that right?

Mr. **Fairchild**. Yeah.

Ms. **Naughton**. Now you were not aware that he was wired up at the time you talked to him?

Mr. **Fairchild**. No; no.

Ms. **Naughton**. And he was telling you he was interviewed by the FBI, and he wanted to talk to you so that you two could get your stories straight. Is that the gist of it?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And you told him, didn't you, that the oil deal with Judge Nixon was not a bribe and was not connected to Drew's case, is that right?

Mr. **Fairchild**. That's right.

Ms. **Naughton**. And do you remember anything else that you said to him, of any importance now, when you think about it?

Mr. **Fairchild**. He mentioned about getting—and he mentioned the Drew's thing, and he tried to make something out of it, and I said to him that the deal with Judge Nixon didn't have a damn thing to do with Drew Fairchild's case, and that's on the tape.

Ms. **Naughton**. And was that true when you said it?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. And it is true now?

Mr. **Fairchild**. Yes.

Ms. **Naughton**. Thank you, Mr. Chairman. I have no further questions.

Mr. **Edwards**. Thank you. We will recess until tomorrow morning, here, in this room, at 9:00 a.m. At that time, in addition to completing Mr. Fairchild's testimony, the subcommittee hopes to spend a few minutes marking up H.R. 4458 which has to do with the FBI, and race tracks, which we had originally noticed for this morning.

I would also like, at that time, to take a few minutes, tomorrow morning, to discuss with members of the subcommittee the possibility of Judge Nixon testifying before the subcommittee.

Mr. **Sensenbrenner**. Mr. Chairman.

Mr. **Edwards**. Mr Sensenbrenner.

Mr. **Sensenbrenner**. I would like to know what the procedure would be relative to cross-examination of Mr. Fairchild by Judge Nixon's attorneys.

Mr. **Edwards**. Tomorrow morning, in accordance with the usual practice, members will question Mr. Fairchild under the 5-minute rule, pursuant to House rules, after which time Mr. Stewart, or his nominee, of Judge Nixon's defense staff, will have 10 minutes, subject to further requests for additional 10-minute questioning periods, as we did before.

Mr. **Sensenbrenner**. May I ask Mr. Stewart how longs he anticipates the cross-examination to take.

Mr. **Edwards**. Mr. Stewart, do you want to respond to that?

Mr. **Stewart**. Certainly, it is difficult to predict, and I realize the last time I tried this I did not win a lot of credibility with the subcommittee because I was wrong.

I would expect, subject, obviously, to the extensions available from the chair, that we would have in excess of an hour of questioning in less than two hours.

Mr. **Sensenbrenner**. Thank you.

Mr. **Edwards**. And I will point out that the subcommittee is most interested in being fair to all parties, and as long as the examination is relevant, we are always generous insofar as learning more about the case.

Mr. **Stewart**. I appreciate the subcommittee's approach to that so far.

Mr. **Edwards**. The subcommittee is now recessed until 9:00 o'clock tomorrow morning.

[The subcommittee recessed at 3:58 p.m., to reconvene at 9:00 a.m., July 7, 1988.]

JUDGE WALTER L. NIXON, JR., IMPEACHMENT INQUIRY

THURSDAY, JULY 7, 1988

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:07 a.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Members present: Representatives Edwards, Kastenmeier, Conyers, Schroeder, Sensenbrenner, DeWine, and Dannemeyer.

Staff present: Catherine E. LeRoy, counsel; Alan I. Baron, special counsel; Pamela J. Naughton, assistant counsel; Peter Keith, assistant counsel; Daniel Freeman, parliamentarian; and Alan M. Slobodin, associate counsel.

Mr. **Edwards**. The subcommittee will come to order.

Mr. Fairchild, we will continue with you, and we hope that we can finish your testimony this morning because we understand you have an airplane.

Mr. **Sensenbrenner**. Mr. Chairman?

Mr. **Edwards**. Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Mr. Chairman, I understand that Mr. Fairchild has a 1:30 plane, and I will be willing to withhold making a point of order when the House goes into the five-minute rule today if we can get some kind of a commitment to conclude Mr. Fairchild's testimony no later than noon so that he can get to the airport and grab a bite to eat and get on his plane.

Mr. **Edwards**. Mr. Stewart, do you suppose that you will be able to plan to do that? Mr. Sensenbrenner and I have very few questions, I believe, although the other members might have some.

Mr. **Stewart**. I anticipate no problem with that.

Mr. **Edwards**. Do the best you can, all right?

Mr. **Stewart**. Yes, sir.

Mr. **Sensenbrenner**. That is fine, then.

Mr. **Edwards**. Right.

Mr. **Fairchild**. Thank you very much, Mr. Chairman.

Mr. **Edwards**. Well, I have a couple of questions, Mr. Fairchild, and then we will see if Mr. Sensenbrenner has any and then we will invite Mr. Stewart to question you for a while.

Now, those notes that we talked about yesterday from the judge to you, those were three-year notes. They didn't provide for any payments before the end of the three years. They were just due at the end of three years, isn't that correct?

TESTIMONY OF WILEY FAIRCHILD

Mr. **FAIRCHILD**. That's the way I understand it, yes.

Mr. **EDWARDS**. So, actually, when you were getting payments on the notes, they were being prepaid. Those notes were all due and payable three years from a certain date, I believe.

Mr. **FAIRCHILD**. Yes.

Mr. **EDWARDS**. Yes, but you were paid in advance by Judge Nixon?

Mr. **FAIRCHILD**. I think that's correct, yes.

Mr. **EDWARDS**. I think that's correct, yes. I wanted to clear that up.

Mr. **FAIRCHILD**. Yes.

Mr. **EDWARDS**. How many times did the FBI come to see you?

Mr. **FAIRCHILD**. I believe it was three times.

Mr. **EDWARDS**. What did they seem to be interested in? Were they mostly interested in Judge Nixon?

Mr. **FAIRCHILD**. Yes.

Mr. **EDWARDS**. Now, at that meeting in your office before the evening at—before Judge Nixon was at Holmes' farm—and I believe that you testified that you chatted with Judge Nixon and described the alleged blackmail that you were being subjected to, is that correct?

Mr. **FAIRCHILD**. Yes.

Mr. **EDWARDS**. Right. Now, was the blackmail all you talked about, to the best of your recollection, or did you ask him specifically to put a good word in for Drew?

Mr. **FAIRCHILD**. I don't remember asking him to put a good word in for Drew. I complained that he was picking on my son, and go ahead and indict Bob Royals, prosecute him, and they wouldn't hear a word out of me.

Mr. **EDWARDS**. Well, then, when the phone call came later that evening, you thought that the judge was referring to the blackmail had been cleared up or that he had spoken to Holmes about Drew?

Mr. **FAIRCHILD**. Yes. I knew he had spoken to Bud Holmes.

Mr. **EDWARDS**. About Drew?

Mr. **FAIRCHILD**. Yes.

Mr. **EDWARDS**. But you hadn't asked him to?

Mr. **FAIRCHILD**. No.

Mr. **EDWARDS**. In other words, I believe you said yesterday that Judge Nixon never—that you never said a word to Judge Nixon about helping Drew.

Mr. **FAIRCHILD**. That's right.

Mr. **EDWARDS**. Yes. Now, I believe yesterday, also, Mr. Fairchild, that you are not sure when the phone rang from the farm Judge Nixon or Bud Holmes was on the line, is that correct?

Mr. **FAIRCHILD**. Repeat the question, please.

Mr. **EDWARDS**. Well, you were home or in your office when the phone rang from the farm, Bud Holmes' farm that night, that famous night.

Mr. **FAIRCHILD**. Yes.

Mr. EDWARDS. And I thought that you said yesterday that the person on the other end of the line could have been either Nixon or Holmes.

Mr. FAIRCHILD. Well, it could have been, but the way I remember it, it was Judge Nixon.

Mr. EDWARDS. The way you remember it, it was Judge Nixon on the phone?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And then after that, Bud Holmes came on?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And the way you remember it, it wasn't Holmes first and then he handed the phone to Nixon?

Mr. FAIRCHILD. What I remember was Judge Nixon first and Bud Holmes next.

Mr. EDWARDS. Fine, thank you.

And how many times did you appear before the grand jury, Mr. Fairchild?

Mr. FAIRCHILD. Two.

Mr. EDWARDS. Two times, and what did you—well, I won't ask you that question.

Now, Mr. Weingarten several times mentioned the smoking gun?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And what did you understand the smoking gun to be?

Mr. FAIRCHILD. Well, it would be something that would help him to get a conviction on Judge Nixon.

Mr. EDWARDS. So Mr. Weingarten was very interested in getting a smoking gun on Judge Nixon?

Mr. FAIRCHILD. Yes, I was under that impression.

Mr. EDWARDS. And did he intimate to you or was he specific in talking to you—I'm talking about Mr. Weingarten—that if you could somehow or another come up with a smoking gun that you would get off free?

Mr. FAIRCHILD. Well, when I told him about the phone call, my attorneys informed me that's a smoking gun that he wants, but when I told him about that, he says that won't get it; I got to have a smoking gun.

Mr. EDWARDS. Now, referring to the notes that were later typed and that I believe Judge Nixon's lawyers felt were instructions in one way or another from Weingarten, he was—Weingarten was in the room when Baltar, was it——

Mr. FAIRCHILD. Baltar, yes.

Mr. EDWARDS. Yes; wrote the notes out?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And did Weingarten hear Baltar talking to you about the notes? Was he just a few feet away?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Did you consider that he was a part of the action, a part of the communication that was going on about the notes?

Mr. FAIRCHILD. Yes, that Mr. Baltar was taking the notes, yes.

Mr. EDWARDS. But Weingarten was sitting very close to you, you said.

Mr. FAIRCHILD. Yes, just across the desk.

Mr. Edwards. Yes. Do you feel, Mr. Fairchild, that you were treated unfairly by the Government in this whole series of events?

Mr. Fairchild. I couldn't say that, Mr. Chairman. I feel like that I—that my attorneys done a real poor job of representing me. They didn't ask for the charges to be reduced and the letter that we got in exchange—the plea bargain letter, I call it—wasn't specific like I thought it would be.

Mr. Edwards. Did you feel that the illegal gratuity count that you pled guilty to was a proper count? You don't feel that there was any illegal gratuity involved in these transactions, isn't that correct?

Mr. Fairchild. No, I never considered that it——

Mr. Edwards. And I suppose you wish you didn't have to plead guilty to that, is that correct?

Mr. Fairchild. That's correct.

Mr. Edwards. But your lawyer thought it was a good count that you could have been convicted on?

Mr. Fairchild. Well, they just, to use the exact words, said I was guilty as hell.

Mr. Edwards. Did you have to pay those lawyers anything?

Mr. Fairchild. Yes, but I didn't pay them what they billed me for.

[Laughter.]

Mr. Edwards. What was the other count, the perjury count? What did they allege that you did?

Mr. Fairchild. Trying to keep the deal with Judge Nixon a secret.

Mr. Edwards. Well, that was a legal deal. Why would you keep it a secret?

Mr. Fairchild. Well, there wasn't no reason to keeping it a secret and I didn't try to keep it a secret.

Mr. Edwards. No, you never did. This is a different lawyer you have, isn't that correct, Mr. Fairchild?

[Laughter.]

Mr. Fairchild. Thank you, Mr. Chairman. I want to make that plain. It wasn't Mr. Gunn here.

Mr. Edwards. Mr. Sensenbrenner.

Mr. Sensenbrenner. Thank you, Mr. Chairman. I think that the material that has been received in the record at the earlier hearings are adequate for purposes of the subcommittee's consideration and therefore I have no questions of this witness.

Mr. Edwards. I might have a few questions after Mr. Stewart. Mr. Stewart, we will go along on the ten-minute rule and you may proceed.

Mr. Stewart. Thank you, Mr. Chairman.

Mr. Fairchild, I'm over here on the first base line and if you could maybe switch around a little to face me, it might be easier.

At the outset, I want to ask just a couple of very specific questions. I think they have been covered, but I want to just nail them down for sure.

Did the investment that Judge Nixon had with you—did that investment have anything at all to do with Drew's criminal case?

Mr. Fairchild. No.

Mr. **Stewart**. All right, and in interviews with the FBI and in your grand jury testimony and in your trial testimony and here today and yesterday, that has always been what you said, isn't that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, when you went into that investment with Judge Nixon, did you intend to corrupt him?

Mr. **Fairchild**. No.

Mr. **Stewart**. At that time, did you have a case pending before Judge Nixon?

Mr. **Fairchild**. No.

Mr. **Stewart**. Did you want him to rule on in your favor, some case?

Mr. **Fairchild**. No, I didn't have no case before him.

Mr. **Stewart**. Was there any single thing that you wanted from Judge Nixon at that time?

Mr. **Fairchild**. No.

Mr. **Stewart**. Was that investment a gift from you to Judge Nixon?

Mr. **Fairchild**. I don't consider it, no.

Mr. **Stewart**. And you made a substantial profit on that transaction, the interest you transferred to him?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, I believe you testified at trial and here yesterday again that you never did ask Judge Nixon to do anything about Drew's case.

Mr. **Fairchild**. Not specifically, no.

Mr. **Stewart**. OK, and you also testified yesterday that you never did discuss with Judge Nixon possibly whether Drew's case could be passed to the files, that that never came up.

Mr. **Fairchild**. No.

Mr. **Stewart**. Is that correct?

Mr. **Fairchild**. No, I never did discuss Drew's case with Judge Nixon.

Mr. **Stewart**. OK, and the phrase "passing to the files" never came up with Judge Nixon?

Mr. **Fairchild**. Not with him, no.

Mr. **Stewart**. OK, and it never came up when Bud Holmes called you from the farm, when you spoke to him from the farm?

Mr. **Fairchild**. No, I don't remember that; no, he didn't. I don't remember him saying anything about passing it to file.

Mr. **Stewart**. All right. And, in fact, isn't it true that you didn't even know there was such a legal procedure as passing a case to the files until it happened in Drew's case?

Mr. **Fairchild**. That's correct.

Mr. **Stewart**. I want to ask a couple questions about April of 1984, which is when the FBI comes to see you, and also when Skip Jarvis came to see you. Now, you discovered later—it was covered yesterday—that the FBI had wired up Mr. Jarvis with a microphone.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And Ms. Naughton questioned you some yesterday about that event and you said that your statements to Mr. Jarvis were true during that conversation. Is that accurate?

Mr. Fairchild. Yes.

Mr. Stewart. OK. Let me ask about a couple of statements you did make. In Exhibit 21 at page 12—and that's for the subcommittee if they want to look at it; I'm just going to read you the passage I'm interested in.

Mr. Jarvis asked you about the back-dating of the mineral deeds, dating it the previous date, and your statement was, and I'm quoting here, "But the deal had already been made. We just dated it back to when it was made." Now, was that true?

Mr. Fairchild. Yes.

Mr. Stewart. And on the following page, on page 13, you told Mr. Jarvis that the Nixon investment, and here I'm quoting, "didn't have a damn thing to do with Drew," end of quote. That's what you said throughout?

Mr. Fairchild. That's correct, that's correct.

Mr. Stewart. OK, all right. Now, later that same night, Mr. Jarvis telephoned you at home and he tape recorded that call as well. You have learned that subsequently, I take it.

Mr. Fairchild. The evening that he was in there with the tape on, it was the night before, the best I remember it.

Mr. Stewart. All right, OK. I may have the wrong specific date, but he did call you at home and tape record it?

Mr. Fairchild. Yes.

Mr. Stewart. OK. This is also in Exhibit 21 at the tail-end of it, and Mr. Jarvis asks you if the mineral interests sold to Judge Nixon were worth anywhere near what you charged Judge Nixon and you replied, and here's the quote, "When the deal was made, when we—when the verbal deal was made, hell, yes." That was true, wasn't it?

Mr. Fairchild. Yes.

Mr. Stewart. OK, and when he asked you about the dating of the instruments, you said in that phone call, quote, "It's like happens so many times. A deal is made before everything is—the papers is drawn up, see, but I assure you the deal was made when that was—that was legitimate, see," end of quote. Now, that was true, wasn't it?

Mr. Fairchild. Yes.

Mr. Stewart. OK. I'm going to switch subjects a little bit here and just ask a little background about the oil business. How many oil properties have you invested in over the years? Just a rough figure—I'm not——

Mr. Fairchild. Well, it would be real rough; probably 6,000 to 10,000.

Mr. Stewart. All right, and since 1958, I think you said that's been your major business.

Mr. Fairchild. Yes.

Mr. Stewart. You, personally.

Mr. Fairchild. Yes.

Mr. Stewart. OK, and after all of that experience, can you predict with certainty how an oil property will turn out?

Mr. Fairchild. No.

Mr. Stewart. Before a well has been drilled on a piece of property, can you be certain that that property will be profitable?

Mr. Fairchild. No. The chances of hitting a well is something like one out of five to eight.

Mr. Stewart. OK. Now, after a test well is drilled, can you be certain that that well will still be a good producer?

Mr. Fairchild. No.

Mr. Stewart. OK, and even if you get a positive test, have you had wells with a positive test then turn out not to be good producers?

Mr. Fairchild. Yes.

Mr. Stewart. If you could describe even what can go wrong with a well that has already been drilled?

Mr. Fairchild. Well, I'll describe one in Jeff Davis County. We drilled and tested it and it tested 4.5 million, and some condensate, and we thought we had a barn-burner, as we call it, and we built the pipeline and the treating facilities and that well produced 134 million cubic foot of gas and went dry. It was just a small reservoir.

Mr. Stewart. So it turned out nowhere near as productive as you had hoped?

Mr. Fairchild. No. It wasn't one percent as good as we thought.

Mr. Stewart. And you can run into problems even with an operating well in terms of mechanical breakdowns, isn't that right?

Mr. Fairchild. Well, no, not a mechanical breakdown. You can have—be working—have a work-over rig on a well and, you know, just don't get it back on stream.

Mr. Stewart. OK. It turns out the well has been drilled in the wrong angle or inappropriately, improperly?

Mr. Fairchild. Well, I can't answer that.

Mr. Stewart. All right. Do you have a problem with salt water contamination in the reservoirs?

Mr. Fairchild. Yes. That's the most common——

Mr. Stewart. All right.

Mr. Fairchild. —cause of a well to fail when salt water comes in.

Mr. Stewart. Once a well starts to produce, can you say exactly how long it's going to produce?

Mr. Fairchild. No.

Mr. Stewart. And do fluctuations in the price of oil affect the profitability of a well?

Mr. Fairchild. Yes.

Mr. Stewart. All right, and that price has fluctuated a good deal over the years, hasn't it?

Mr. Fairchild. Yes.

Mr. Stewart. Just as a general rule, I take it, then, there's no sure things in the oil business, is that right?

Mr. Fairchild. No, but you—there's no sure thing, but if you drill enough of them, you're going to get one that really pays off.

Mr. Stewart. OK, and you use your best judgment to try to find one?

Mr. Fairchild. Yes.

Mr. Stewart. All right, but each specific well is a gamble, isn't that right?

Mr. Fairchild. Repeat the question.

Mr. Stewart. Each specific well is a gamble?

Mr. Fairchild. Yes.

Mr. STEWART. All right. Now, let me switch a little bit now to when Mr. Ingram, Carroll Ingram, approached you to talk about Judge Nixon's investment. Now, Mr. Ingram is your second cousin, isn't that correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and at that time he was doing some work for you as your attorney, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and you had supported him politically?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and he had become Chairman of the Judiciary Committee in the State senate up in Jackson?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and at that time it's fair to say you relied on Carroll Ingram pretty heavily, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and is it true that if Carroll Ingram suggested this investment with Judge Nixon that you figured there would not be a legal problem with it?

Mr. FAIRCHILD. That's correct.

Mr. STEWART. OK.

Mr. FAIRCHILD. He's a lawyer. I didn't think that—it never crossed my mind.

Mr. STEWART. All right, and you were relying on his judgment that there was no legal problem; he was your lawyer?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. Now, I take it when Mr. Ingram came to you—well, did he say to you that he wanted you to make a corrupt pay-off to Judge Nixon?

Mr. FAIRCHILD. No.

Mr. STEWART. Did he say to you, Mr. Fairchild, I want you to lay a big gift on Judge Nixon?

Mr. FAIRCHILD. No, he didn't say that.

Mr. STEWART. OK. He said he thought Judge Nixon would like to do an investment with you, correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and Judge Nixon was going to pay for it, is that right?

Mr. FAIRCHILD. Yes, yes.

Mr. STEWART. And he might make money or he might not, is that correct?

Mr. FAIRCHILD. Well, I knew that.

Mr. STEWART. OK.

Mr. FAIRCHILD. And Carroll knew the oil business, too, and he knew that was so.

Mr. STEWART. All right. Now, when you agreed to go ahead with the investment, you decided the particular properties that Judge Nixon would have an opportunity to investment in, is that accurate?

Mr. FAIRCHILD. Yes, yes.

Mr. STEWART. OK, and you decided on the price to be charged?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, you were asked some questions about the changes in the acreage. Do you recall—and I'm trying to refresh your recollection some. This is when the acreage was changed on the deeds.

Do you recall Carroll Ingram saying that the acreage on the deeds was not the acreage—on the original deeds—was not the acreage that you had previously told him was supposed to be on the deeds? Do you have any recollection of that?

Mr. **Fairchild**. He could have said something to that effect.

Mr. **Stewart**. OK, and if Mr. Ingram recalls that, you wouldn't dispute his recollection on that, is that right?

Mr. **Fairchild**. No, no, I wouldn't.

Mr. **Stewart**. I believe actually at trial you testified at several points that Carroll Ingram's memory on a lot of these details, since he was doing the details of the deal, would probably be better than yours.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, Judge Nixon did not ask you for any special price on these properties, did he?

Mr. **Fairchild**. No.

Mr. **Stewart**. And you understood essentially he was relying on you to treat him fairly in the deal?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and that's what you attempted to do?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Now, there's been some testimony about when the verbal agreement was made, how that was before the actual instruments got signed. Do you know the date when that verbal agreement was reached?

Mr. **Fairchild**. The best I remember is in late 1979 or early 1980.

Mr. **Stewart**. OK, and then after that was reached, you relied upon Carroll Ingram to prepare the deeds and the instruments?

Mr. **Fairchild**. Everything, yes, to prepare them.

Mr. **Stewart**. OK, and then as I recall you covered yesterday, he did not produce those deeds and you had to have your own office prepare them.

Mr. **Fairchild**. That's right.

Mr. **Stewart**. All right, so there was some kind of delay built in there. Do you recall how long?

Mr. **Fairchild**. Quite some time.

Mr. **Stewart**. OK, but you couldn't put a precise time frame on it?

Mr. **Fairchild**. No.

Mr. **Stewart**. OK. Now, here, I'm going to try to talk again a little about the oil business in the context of what we just described here. As time passes and as an oil well nears the point of production, it often will increase in value, won't it?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and say if it took a year for that paperwork to be completed on Judge Nixon's investment, you might expect an increase in the value of those wells over that year?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. You were asked about the valuation of those wells yesterday and I had some concern that you didn't get a chance to get a complete description of it. What I'd like to do is read to you the testimony that you gave at trial, Judge Nixon's trial, just make sure that this was accurate here.

It's at page 504 of the transcript and Mr. Weingarten is questioning you. The question was, "Mr. Fairchild, in your view, in your opinion, what was the value of the three mineral royalty interests that are represented in Government's Exhibit 8, 9, and 10?" There is some byplay and then he says, "As of February 25, 1981." That's the date when the deeds are dated.

Your answer: "Oh, approximately $26,000, $28,000." Question: "How do you come up with that figure?" Answer: "Well, it's just a judgment." Question: "And a judgment based on what?" Answer: "On all the information I had about the well." Question: "Were the wells worth more or less than that, in your judgment, on February 25, 1980?" Answer: "They were worth less."

Now, was that accurate, that a year before February of 1981 the wells were worth less than $26,000 to $28,000?

Mr. FAIRCHILD. In February of 1981?

Mr. STEWART. Well, I may have confused you here and let me try to clarify if I can. As I read this testimony here, you're saying in February of 1981 when the notes were executed and the deeds were signed, the value of the wells, in your judgment, was $26,000 to $28,000, but that a year earlier the value of the wells would have been less.

Mr. FAIRCHILD. That's correct.

Mr. STEWART. OK, and that's accurate testimony?

Mr. FAIRCHILD. That's correct.

Mr. STEWART. OK. So the price of $9,500 that was placed on these wells—if that was the price as of the time the verbal deal was made more than a year later, that was a fair price, is that right?

Mr. FAIRCHILD. I considered it a fair price, but I could have got out and—I'm not in the business of promoting and selling to make a profit. I could—at that time, I could have probably got more for it.

Mr. STEWART. OK, but you didn't feel like you were giving away those interests when you sold them for $9,500?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. Let me just ask specifically about the Wilkie well. You recall that's the one in Hatter's Pond in Alabama?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Now, that well was selected when the verbal deal was made in early 1980 or so, is that about right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and Ms. Naughton questioned you yesterday about how there was a test run on that well in the summer of 1980, June or July, and the well looked pretty good. Do you recall that?

Mr. FAIRCHILD. Yes, yes.

Mr. STEWART. OK. That test is actually reflected in Exhibit N-45. Now, when you get those test results, the value of the well would go up, wouldn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. So the valuation that you might have had six months before would go up after that test results come in?

Mr. FAIRCHILD. Yes.

Mr. Stewart. All right. Now, these interests that you sold for $9,500, you had purchased those for just a few hundred dollars, isn't that right?

Mr. Fairchild. Yes, $200 a lease acre, or approximately $200. I don't remember the exact figure right now.

Mr. Stewart. Do you recall that you had your profit on those interests calculated at the time the investigation started?

Mr. Fairchild. Yes.

Mr. Stewart. OK. I want to refer to Exhibit N-14; it's in the book of exhibits we submitted. It was a trial exhibit, Mr. Fairchild; you may recognize it. It's a single sheet dated July 16, 1984, and it's signed by Lynn Jones. Who's—I'm not even sure if it's a man or a woman. Who is Lynn Jones?

Mr. Fairchild. That's the lady that works in the oil department.

Mr. Stewart. OK. I want to read a couple of these entries and just make sure that you believe they are accurate. "The following figures are based on original costs of the mineral interests in the following three wells in which Judge Walter Nixon bought an interest: the Wilkie gas unit in Mobile County, Alabama; bought three overriding royalty acres, or 1.8 percent, or 1/55th of what WRFCC owns." I take it that's W.R. Fairchild Construction Company?

Mr. Fairchild. Yes.

Mr. Stewart. OK. "Profit margin of 23.43 times cost of acreage, or 2,343 percent profit." Was that accurate?

Mr. Fairchild. Yes.

Mr. Stewart. All right. The next one is the L.D. Ross well in Covington County, Mississippi. It says, "Judge Nixon bought five overriding royalty acres, or 1.4 percent, or 1/71st of what FW owns." I take it that's Fairchild-Windom?

Mr. Fairchild. Right.

Mr. Stewart. "Profit margin of 13.29 times cost of acreage, or 1,329 percent profit." Was that accurate?

Mr. Fairchild. Yes.

Mr. Stewart. OK. Then the Rogers 28-11 well in Marion, County, Mississippi; "bought three overriding royalty acres, or 4.46 percent, or 1/22nd of what WRFCC owns; profit margin of 83.13 times cost of acreage, or 8,313 percent profit." Was that accurate?

Mr. Fairchild. Yes.

Mr. Stewart. Now, Ms. Naughton pointed out, I guess, that you also held the working interest in the Wilkie well.

Mr. Fairchild. Yes.

Mr. Stewart. And that was true?

Mr. Fairchild. Yes.

Mr. Stewart. And when you have a working interest, you have extra costs. That's fair?

Mr. Fairchild. Yes.

Mr. Stewart. OK, and you also get extra revenue. You get a lot more money than someone with a royalty interest, isn't that right?

Mr. Fairchild. Yes.

Mr. Stewart. OK, but you didn't sell Judge Nixon your working interest, did you?

Mr. Fairchild. No.

Mr. **Stewart**. OK. Now, I want to focus on each well, in particular, just for a second. Taking the Ross well first in Covington County, now that was the largest interest you sold him; that was the five royalty acres.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Do you recall that?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and that one did not turn out especially well. Do you recall that?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. No big profit on that well?

Mr. **Fairchild**. No, not——

Mr. **Stewart**. OK. Then there was the Rogers 28-11 well in Marion County, and that turned out well.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Do you recall that?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, it's reflected in Exhibit N-44, but Ms. Naughton did cover this with you yesterday. That well did not produce until April of 1981, which was two months after the deeds were signed, is that right?

Mr. **Fairchild**. That's right.

Mr. **Stewart**. OK. So when the documents for Judge Nixon's investment were executed in February of 1981, that well was not even in production, is that right?

Mr. **Fairchild**. That's right.

Mr. **Stewart**. OK, and even though you may have thought that was going to be a good well, you couldn't be certain of that in February of 1981, could you?

Mr. **Fairchild**. No.

Mr. **Stewart**. OK, and surely a year before then when the verbal deal was reached, you were even less certain that the Rogers well was going to be a good producer, isn't that right?

Mr. **Fairchild**. That's correct.

Mr. **Stewart**. OK. Now, the Wilkie well in Hatter's Pond—that's reflected in Exhibit N-45, but, again, Ms. Naughton did cover this some yesterday. That shows no real production until October of 1981, which is almost eight months after the deeds were executed. Is that correct?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. Now, since that well was not on stream, the same questions I just asked, at the time the deeds were signed you could not be certain that would be a good producer?

Mr. **Fairchild**. No.

Mr. **Stewart**. OK, and by the same token, a year before then you were even less certain that that would be a good producer?

Mr. **Fairchild**. That's correct.

Mr. **Stewart**. OK. How did the Wilkie well turn out?

Mr. **Fairchild**. Nobody has ever asked me that, but it was a barn-burner for a while, but it went—had we call it mechanical problems and it's not on stream anymore.

Mr. **Stewart**. OK.

Mr. **Fairchild**. But it's unitized in the Hatter's Pond and we were given a track factory and we're still drawing a check on it.

Mr. **Stewart**. OK. It did real well for a while, though?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Did you know that well was going to be that good when you picked it for Judge Nixon?

Mr. **Fairchild**. No.

Mr. **Stewart**. Judge Nixon just got lucky, didn't he?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. If you could call it that.

Now, on these deals you took a note from Judge Nixon for a purchase price of $9,500 at ten percent interest.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and you stood to make a profit on that note when the interest was paid?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. It was not an interest-free loan?

Mr. **Fairchild**. No.

Mr. **Stewart**. In fact, when you discovered that interest for a previous year hadn't been charged, you made sure that it was charged, didn't you?

Mr. **Fairchild**. Well, Billy Riley, my controller in the office, handled that.

Mr. **Stewart**. All right. When you took those notes, did you figure a Federal judge was going to welsh on his debts?

Mr. **Fairchild**. No, I didn't figure he would.

Mr. **Stewart**. And you testified yesterday you expected to be paid on those notes?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. Now, you testified yesterday that you did not recall seeing the notes from Judge Nixon, actually having them in front of you, until the investigation started in 1984.

Is it your job at the Fairchild Companies to keep track of all the paperwork? Is that your responsibility?

Mr. **Fairchild**. No, no, I don't handle no details like that.

Mr. **Stewart**. OK. You hire people to do that, don't you?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And if Skip Jarvis testified at trial that he saw those notes in the summer of 1982, two years before then, you wouldn't dispute him?

Mr. **Fairchild**. No, I wouldn't.

Mr. **Stewart**. OK, and if Carroll Ingram testified that he got the notes signed by Judge Nixon in February or March of 1981, three years before then, you wouldn't dispute Mr. Ingram on that?

Mr. **Fairchild**. No.

Mr. **Stewart**. Now, back-dating deeds or instruments, using an earlier date when a verbal agreement was reached and using that date at a later time when instruments are actually executed, that's not uncommon in the oil business, is it?

Mr. **Fairchild**. No, it's not.

Mr. **Stewart**. You've done that in lots of deals, haven't you?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And you've never had a lawyer tell you that's illegal, that's wrong?

Mr. **Fairchild**. No.

Mr. **Stewart**. And in this case you were just back-dating to the time the verbal agreement was reached?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, you were asked yesterday about a clause in those royalty deeds that says that, and I'm quoting here, "This conveyance is to be effective from the first day of production." I believe you've stated that that is a standard clause?

Mr. **Fairchild**. It is when I sell overriding royalty.

Mr. **Stewart**. OK, and that was not included in these notes in any way or in the deeds as some kind of extra bribe or extra payment to Judge Nixon?

Mr. **Fairchild**. No.

Mr. **Stewart**. And I take it sometimes—is it true that sometimes deeds or instruments have to be drawn up with a blank grantee until you're sure what name to put in there?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. In this case, the deeds were publicly recorded in Walter Nixon's name, weren't they?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. I believe even Chairman Edwards asked about this. You did not conceal this investment with Judge Nixon in this sale?

Mr. **Fairchild**. No, no.

Mr. **Stewart**. Well, why didn't you conceal it?

Mr. **Fairchild**. I seen no—there wasn't no reason to conceal it.

Mr. **Stewart**. All right. Let me move on to another subject. When you met Judge Nixon and talked about this investment, and you recalled that he said he'd help you if he could and if he could not help you, he'd tell you so.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. So you understood from that, and I believe you said this yesterday, that Judge Nixon was telling you that there were certain things and there were limits on anything he might be able to do for you, is that right?

Mr. **Fairchild**. Yes. What I interpreted what he said—well, if I can help you, I will, but don't ask me for something unreasonable because I won't do it.

Mr. **Stewart**. OK, and so you understood that he was going to respect limits and there were things he just couldn't do for you?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. He didn't tell you, just name it, Mr. Fairchild, and I'll do it for you?

Mr. **Fairchild**. No.

Mr. **Stewart**. All right. He didn't tell you, if you've got a case in my court, don't worry, I'll take care of it?

Mr. **Fairchild**. No.

Mr. **Stewart**. Did you realize at the time that under Federal law Judge Nixon would have to disqualify himself from ruling on any case in which you were involved?

Mr. **Fairchild**. Yes, I was aware of that.

Mr. **Stewart**. OK. and you didn't expect that because of this investment, Judge Nixon was going to do anything illegal, that he was going to break that law, did you?

Mr. **Fairchild**. No.

Mr. **Stewart**. I need to switch a little now to Drew Fairchild's case, your son's. At some point, you became convinced, and you've testified about this, that Mr. Holmes and Mr. Porter and a fellow named Bob Royals were trying to pressure you.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. They were pressuring you for money in connection with that case?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and you called that blackmail, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. I just want to talk about a couple of the events that led you to that belief. There was the moment or the time when Mr. Porter sued Drew Fairchild, sued your son, for $10,000 in legal fees.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. No question he's after some money?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and you paid Bill Porter $2,500 to try to make that thing go away, is that right, or $2,600, or something?

Mr. **Fairchild**. Twenty-six, yes.

Mr. **Stewart**. OK, and you were trying to make that lawsuit go away?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. Then your son's case ended up in Bud Holmes' hands, even though Drew had a deal with George Phillips for the Federal Government. Do you recall that?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Now, that made you suspicious, didn't it?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Then Mr. Holmes suggested to you that you should hire Bill Porter to handle the State case. Do you recall that?

Mr. **Fairchild**. Well, the way he phrased it——

Mr. **Stewart**. Yes.

Mr. **Fairchild**. —yes, I got the message.

Mr. **Stewart**. OK. That's what you thought he was telling you?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and did that make you still suspicious even more?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Then you got a message from Drew and from Bob Royals that if you paid Mr. Porter $7,500, Drew's troubles would be over. Do you recall getting that message?

Mr. **Fairchild**. Yes, I got the message, but I don't remember whether it was Bob Royals, but I think it come direct from Drew.

Mr. **Stewart**. OK, and you have described an occasion on which Mr. Royals said to you, if only Drew's father would get up off—that Bill Porter had said, if only Drew's father would get up off his money, then this would all get taken care of?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, how many times did Mr. Royals deliver that message to you?

Mr. **Fairchild**. Well, the time he come out to the office and when he went through his speech, and I told him the answer was no, hell no. He hinted around other times, but I can't remember no specific, but he brought it to a point.

Mr. STEWART. OK. So he said it flat out once and he may have hinted about it some other times and you thought he was hinting about it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Do you recall when those conversations occurred?

Mr. FAIRCHILD. No.

Mr. STEWART. OK, but you did pay Bill Porter that extra $7,500?

Mr. FAIRCHILD. I bought everything that my son had and that money went to pay that, yes.

Mr. STEWART. You used that money, then, to pay Bill Porter?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. You didn't give Drew a free ride?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. You made him convey back to you some property that you'd already given to him?

Mr. FAIRCHILD. Yes, but the $2,600 I paid Bill Porter, I didn't even discuss that with Drew; I don't think I did.

Mr. STEWART. OK.

Mr. FAIRCHILD. And that didn't come to light until after.

Mr. STEWART. All right. Now, you've now paid Mr. Porter over $10,000?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And then Drew's case sometime later on gets passed to the files and 30 days later it comes back.

Mr. FAIRCHILD. Yes.

Mr. STEWART. Did that make you suspicious when that case came right back from the files?

Mr. FAIRCHILD. Well, yes.

Mr. STEWART. OK. Do you remember talking to Bill Porter about Drew's case being passed to the files?

Mr. FAIRCHILD. Not specifically. I probably did, but I don't remember it.

Mr. STEWART. Do you recall Drew or anyone else telling you what Bill Porter thought about that case going to the files?

Mr. FAIRCHILD. I don't remember no specific discussions about it; there probably was.

Mr. STEWART. Well, let me ask you something specific. In that tape-recorded conversation with Mr. Jarvis—that's Exhibit 21—right at page 4, you said to Mr.—I'm just trying to refresh your recollection to see if this sounds right to you.

Mr. FAIRCHILD. OK.

Mr. STEWART. You said, and I'm quoting here, "And Bill Porter said that thing's going to file. It's going to stay there and if it comes out, we'll get it in Federal court," close quote.

Do you recall—does that help you remember?

Mr. FAIRCHILD. Yes, yes, I remember.

Mr. STEWART. OK, and so Mr. Porter was telling you about his strategy and how he was trying to get the case passed to the files?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and do you recall when that conversation occurred?

Mr. **Fairchild**. No.

Mr. **Stewart**. Was it about the time the case was passed to the files?

Mr. **Fairchild**. It probably was, but I——

Mr. **Stewart**. So after he tells you it's going to go to the files, it goes to the files and then it comes roaring back from the files. That's right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and you're real suspicious about this, aren't you?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And it seemed to you at this point that either Bill Porter or Bud Holmes or both of them is not handling Drew's case in a straight manner, is that right?

Mr. **Fairchild**. That's correct.

Mr. **Stewart**. All right, and you thought they were pressuring you for some more money, didn't you?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and you even thought Carroll Ingram might be involved in it somehow, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, you had spoken to Judge Nixon a few times since that first investment, isn't that correct?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. He talked to you on the phone a few times?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and I think you said yesterday he came by the office once or twice; you can't be positive how many times?

Mr. **Fairchild**. That's right.

Mr. **Stewart**. All right, and because of your concerns about being blackmailed by Mr. Holmes and Mr. Porter or Mr. Ingram—you weren't sure exactly who all—is it fair to say you decided you'd try to talk to Judge Nixon on this subject?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, on what date did that conversation occur?

Mr. **Fairchild**. I don't remember.

Mr. **Stewart**. OK. Do you recall that it was right after or close to when Bob Royals had given that message to you?

Mr. **Fairchild**. Yes, it was right after.

Mr. **Stewart**. OK.

Mr. **Fairchild**. To the best of my memory, yes.

Mr. **Stewart**. All right, but you can't sit here and put a date or even a month on it, when it was?

Mr. **Fairchild**. No, I can't.

Mr. **Stewart**. All right. Now, I want to ask you something just to go back to something that came up yesterday. You did say yesterday that you recalled that you thought you had called Judge Nixon's secretary and asked to speak to the judge, and what I want to ask is, and just candidly to ask, are you positive about that because I'm not sure you've ever testified to that before.

Mr. **Fairchild**. I'm not positive.

Mr. **Stewart**. OK.

Mr. **Fairchild**. But to the best of my memory, that's what happened.

Mr. **Stewart**. Somehow, you think you got a message to Judge Nixon, but you can't be positive how. Is that fair?

Mr. **Fairchild**. I asked Carroll Ingram to get in touch with him and time had passed and I don't know whether I called Carroll and tried to get him to call him or just what happened, but I know that at one time I tried to get in touch with him with his secretary.

Mr. **Stewart**. OK. So you couldn't say for sure whether Judge Nixon came to see you because he was passing through Hattiesburg or because he got a message somehow, is that right?

Mr. **Fairchild**. No, I can't say for sure, but it was right after I got upset.

Mr. **Stewart**. OK, and I take you spoke—you tried to call Judge Nixon because—and I think you said this yesterday—because he was a friend of Bud Holmes. You had heard he was a friend of Bud Holmes?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. If Judge Nixon had never met Bud Holmes, you wouldn't have called Judge Nixon on this question, would you?

Mr. **Fairchild**. No.

Mr. **Stewart**. And you knew as a Federal judge, Judge Nixon had no power over Bud Holmes in a State case, isn't that right?

Mr. **Fairchild**. Nothing but friendship.

Mr. **Stewart**. OK. As a friend of Bud Holmes, you had hoped that Judge Nixon might suggest to Mr. Holmes that he ought to stop pressuring you and squeezing you for money, which you thought was a wrong thing to be doing, isn't that right?

Mr. **Fairchild**. Either do that or get Bob Royals indicted. I was mad at my son, too.

Mr. **Stewart**. All right, but you weren't trying to get any favors for Drew?

Mr. **Fairchild**. No.

Mr. **Stewart**. OK. You wanted to stop being pressured for money or even get Mr. Royals in the same soup as your son?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and I believe your phrase yesterday was that you just wanted Judge Nixon to see that justice was done, is that right?

Mr. **Fairchild**. That's right.

Mr. **Stewart**. You wanted Mr. Holmes to live up to that previous plea agreement. That was in your mind, too?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, I believe at one point yesterday you testified you weren't sure if you used the word "blackmailing" when you talked to Judge Nixon, and I wanted to revisit that, and I think maybe Chairman Edwards has already covered that this morning.

Do you have a recollection now that you did talk about the blackmailing concern with Judge Nixon?

Mr. **Fairchild**. Well, I was real angry, I was upset, and I don't specifically remember, but I got Judge Nixon the messages I wanted him to get.

Mr. STEWART. OK. Well, let me ask you about this passage in your trial testimony, Judge Nixon's trial. It's at page 484 and, again, Mr. Weingarten is questioning you for the Government.

He asks you what was the nature of the conversation with Judge Nixon and your answer was, "I told him what it was, that they was trying to blackmail me and I wasn't going to be blackmailed, and that what Bud had promised to do—and I said now if they will go ahead and prosecute Bob Royals, won't hear a word because he's guilty just like my son." And that's what you've said throughout?

Mr. FAIRCHILD. Yes, that's——

Mr. STEWART. OK.

Mr. FAIRCHILD. I remember it now, yes.

Mr. STEWART. OK, and you did tell Judge Nixon about this blackmailing concern?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and you've testified, I believe, that during that conversation you were doing most of the talking. You were pretty hot, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and Judge Nixon didn't say very much, or you don't remember anything he said?

Mr. FAIRCHILD. I don't remember a word he said, but I'm sure he did.

Mr. STEWART. OK, and you didn't ask Judge Nixon to put the fix in on Drew's case?

Mr. FAIRCHILD. No.

Mr. STEWART. And you didn't tell Judge Nixon that you would pay him bribes if only he could shut down Drew's prosecution?

Mr. FAIRCHILD. No.

Mr. STEWART. You didn't actually ask Judge Nixon to do anything, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. But you hoped that Judge Nixon would be so shocked by this blackmail that he'd tell his friends to stop doing what you thought they shouldn't have been doing in the first place, which was pressuring you for money?

Mr. FAIRCHILD. I was hoping he would do that.

Mr. STEWART. OK. There's one other question I really do want to ask you out of fairness to everybody here. Have you since this whole episode concluded whether you were right or wrong about whether Bud Holmes was trying to blackmail you?

Mr. FAIRCHILD. At one time, at some time after that, I was convinced that he wasn't.

Mr. STEWART. I'm not sure that I heard you. That he was or was not?

Mr. FAIRCHILD. Some time after the trial, talking to a lot of people about it, I was convinced that Bud Holmes was wanting—that he was on a note with Bob Royals and he wanted Bob Royals to collect his money—Bill Porter.

And to answer your question, at one time I thought that Bud Holmes was not trying to blackmail me.

Mr. STEWART. What's your current opinion today?

Mr. FAIRCHILD. I'm confused; I just don't know.

Mr. **Stewart**. OK, all right. I want to ask about the phone call now that you got from the farm later that night. First, I want to ask about a small point. Do you recall whether you actually picked up the phone that night or whether your wife maybe picked it up?

Mr. **Fairchild**. No, I don't recall.

Mr. **Stewart**. So she might have picked up the phone, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and so you can't really be sure who actually placed the call. You spoke first to Judge Nixon, but it's possible somebody else was on the line before then, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Now, you had a very short conversation with Judge Nixon. As you've described it, it was just a couple sentences?

Mr. **Fairchild**. That's right.

Mr. **Stewart**. All right, and he told you everything will be to your satisfaction?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Words to that effect?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and did you understand from that that the blackmailing was going to end?

Mr. **Fairchild**. Yes, I was satisfied it was.

Mr. **Stewart**. OK, and you understood—at least you hoped you understood that Drew's case was not going to be messed around with anymore?

Mr. **Fairchild**. Yes. I thought it would be over with.

Mr. **Stewart**. And he'd get sentenced to his probation and his fine and that would be the end of it?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and it did not mean that Judge Nixon had somehow corruptly fixed the case, did it?

Mr. **Fairchild**. No.

Mr. **Stewart**. When Mr. Holmes got on the phone, again, you don't recall Mr. Holmes—and I believe Ms. Naughton covered this with you yesterday—you don't recall him saying that he was going to pass the case to the files?

Mr. **Fairchild**. No, I don't remember him saying that.

Mr. **Stewart**. OK, and——

Mr. **Fairchild**. He could have said it, but I certainly don't remember him saying it.

Mr. **Stewart**. All right, and you don't have any recollection that Judge Nixon when he was on the phone said, I want to thank you for the investment and I got all these children to get through college and you've been so good to me. He didn't say that?

Mr. **Fairchild**. No.

Mr. **Stewart**. OK. Let me ask you about a later event you testified to. I've just a couple of quick questions. When Bud Holmes brought Judge McKenzie out to your office early one morning, it was in December of 1983. That's a year after the case was passed to the files. Do you recall that?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Were you surprised to have this State judge show up in your office with the prosecutor?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Had you ever had a State judge before whom you had a case pending show up in your office with the other party?

Mr. **Fairchild**. No.

Mr. **Stewart**. And Judge Nixon had nothing to do with that, did he?

Mr. **Fairchild**. No, no, not as I know anything.

Mr. **Stewart**. That was just something Bud Holmes was doing?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. Let me switch now to when the investigation started. In April of 1984, and we just talked about it a little bit earlier, you asked John Baltar to tell the FBI that you were being blackmailed by Bud Holmes and by Carroll Ingram about your son's case, is that right?

Mr. **Fairchild**. Yes, yes.

Mr. **Stewart**. Mr. Fairchild, I just remembered a question I was supposed to ask and I forgot. Let me double back on myself.

Mr. **Edwards**. Your first ten minutes is up, Mr. Stewart.

[Laughter.]

Mr. **Edwards**. We will recess for a few minutes, pursuant to notice, to take up H.R. 4458.

[Recess.]

Mr. **Edwards**. The subcommittee will come to order.

Mr. Fairchild, is your lawyer around?

Mr. **Fairchild**. Let's proceed without him.

Mr. **Edwards**. All right.

Mr. Stewart.

Mr. **Stewart**. One of my co-counsel did go out to try to find Mr. Gunn so Mr. Gunn doesn't hate me forever for doing this.

I did want to go back just a second, Mr. Fairchild, to the question when you had this conversation with Judge Nixon about the blackmailing and whatever in your office. Do you have any recollection of ever saying to Judge Nixon, please put in a good word with Bud Holmes for my son, Drew? Did you say something like that?

Mr. **Fairchild**. No. If I said it, I certainly don't remember it.

Mr. **Stewart**. OK.

Mr. **Fairchild**. And if I'd say it, I think I would remember it.

Mr. **Stewart**. All right. Now, I was getting into the point where you asked John Baltar in April of 1984 to tell the FBI that you were still concerned about blackmailing.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. This is after this whole episode with Judge Nixon.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. You got the call from the farm, whatever else has happened, but you're still concerned that you're being blackmailed, is that right?

Mr. **Fairchild**. Yes

Mr. **Stewart**. OK, and the FBI immediately comes down and interviews you the next day, don't they?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. I want to ask you about several statements that the FBI has records of that you made. It's Exhibit N–11; it's in the memorandum of FBI interview with you on April 19, and I just want to read them to you and see if they were true or if you were telling something to the FBI that wasn't true.

The first one is, and I'm quoting here, "Fairchild advised that he, Fairchild, had been the one who set the price of the oil and gas royalties he had sold to Nixon." Now, was that true or was——

Mr. FAIRCHILD. Yes.

Mr. STEWART. I'm sorry?

Mr. FAIRCHILD. Repeat the question.

Mr. STEWART. Oh, sure. The quote is, "Fairchild advised, he, Fairchild, had been the one who set the price of the oil and gas royalties he had sold to Nixon." Is that true?

Mr. FAIRCHILD. Yes, that's true.

Mr. STEWART. All right. Again, another quote: "Fairchild repeatedly denied his business transaction was an attempt on his part to influence or to seek Judge Nixon's influence on behalf of his son, Drew Fairchild, further stating that the thought had never crossed his mind when he entered the transaction with Judge Nixon." Was that true?

Mr. FAIRCHILD. That's true.

Mr. STEWART. OK. Another statement you made: "Fairchild was questioned as to whether his transaction with Judge Nixon was a normal business transaction, to which Fairchild replied that it was." Is that an accurate statement?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. Another one here: "Fairchild advised the possibility of selling oil or gas royalties to Nixon was discussed long before his son, Drew Fairchild, had become involved in a plane load of marijuana that landed in Hattiesburg." Is that true?

Mr. FAIRCHILD. That's correct.

Mr. STEWART. All right. Now, it keeps going here. "Fairchild advised Carroll Ingram had asked him to put Nixon in a deal, doing so in approximately 1979." Is that true?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. "Fairchild recalled Ingram asked him to put Nixon in a deal if one came along." That was accurate?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and you made almost exactly the same statements, which we've already covered earlier today, to Skip Jarvis when he was wired up and came by to see you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. Let me shift now to when you get indicted. You go to the grand jury in July of 1985, I guess—no, it's July of 1984, I'm sorry; my notes say 1985—in July, and you told them roughly the same thing that we just covered that you had told the FBI.

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and then you got indicted two months later.

Mr. FAIRCHILD. Yes.

Mr. STEWART. Were you surprised to be indicted or had you expected it?

Mr. FAIRCHILD. No; I was surprised.

Mr. STEWART. Did you feel like you'd committed any crimes?

Mr. FAIRCHILD. No, I didn't.

Mr. **Stewart**. After you read the indictment, did you feel like you'd been caught in any crimes, that they got you?

Mr. **Fairchild**. Well, at that time I was so upset that I was shocked. I was just almost—I hadn't done anything. I just—I was in a state of shock there for a long time.

Mr. **Stewart**. Now, Mr. Edwards asked you about the perjury charge. That perjury charge claimed that you had falsely denied attempting to conceal the investment with Judge Nixon. Did you think that perjury charge had any basis at all?

Mr. **Fairchild**. No basis whatsoever.

Mr. **Stewart**. All right. Now, the other charge was that you had given Judge Nixon an illegal gratuity, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. Do you recall testifying at Judge Nixon's trial that your lawyers had told you that your crime had been selling too cheap?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Did you feel like you'd done anything wrong or corrupt by selling those mineral interests to Judge Nixon for $9,500?

Mr. **Fairchild**. None whatsoever.

Mr. **Stewart**. Had you had an intent to commit a crime?

Mr. **Fairchild**. No.

Mr. **Stewart**. Did you have an intent to have Judge Nixon do anything illegal or against his job, his responsibilities?

Mr. **Fairchild**. No.

Mr. **Stewart**. This is kind of a personal question, Mr. Fairchild, but I do need to ask it. Were you scared about that indictment?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Did you fear going to prison, even though you didn't think you'd done anything wrong?

Mr. **Fairchild**. Yes. My lawyers told me that if I was convicted, I would have to serve some time.

Mr. **Stewart**. Did that frighten you?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Because of that fear, did you decide to make a deal—try to make a deal with the Government?

Mr. **Fairchild**. I decided to make the deal with the Government because my lawyers said I was guilty as hell.

Mr. **Stewart**. When you decided to make that deal, and I think Chairman Edwards did question you about this, you understood that if you could give the prosecutors something on Judge Nixon, you could get a deal, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and it was no secret that the prosecutors were after Judge Nixon?

Mr. **Fairchild**. Well, I surmised that, sure.

Mr. **Stewart**. OK. So you started reviewing in your own mind based—and I'm sure your lawyers were asking you to try to find something you could tell them about Judge Nixon, isn't that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And you went to meet with the prosecutor and you made a proffer. Do you know that term?

Mr. **Fairchild**. Yes.

Mr. STEWART. OK, and you described to him information that you thought he might be interested in on Judge Nixon, is that right?

Mr. FAIRCHILD. Yes, yes.

Mr. STEWART. The prosecutor you met with was Mr. Reid Weingarten, isn't that correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and you told him about the phone call from Bud Holmes' farm?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And I think you said earlier today his reaction was that's not good enough, Mr. Fairchild, that's no smoking gun, is that right?

Mr. FAIRCHILD. That's what he said.

Mr. STEWART. He didn't think you'd told him about any crime, did he?

Mr. FAIRCHILD. Well, he didn't think that was enough to—he didn't think that was no smoking gun.

Mr. STEWART. Did you ever talk to Mr. Weingarten about taking a polygraph exam about your testimony?

Mr. FAIRCHILD. I begged him to give me—told him I'd pay for it.

Mr. FAIRCHILD. And what was his reaction to that offer?

Mr. FAIRCHILD. Mr. Fairchild, we trust you, we believe you.

Mr. STEWART. OK. Now, I believe you testified yesterday that you had not mentioned the phone call previously because you just did not put—it hadn't come across your mind. You hadn't put any significance——

Mr. FAIRCHILD. It just hadn't registered with me.

Mr. STEWART. And when——

Mr. FAIRCHILD. It just hadn't——

Mr. STEWART. I'm sorry. Go ahead.

Mr. FAIRCHILD. Well, when Mr. Weingarten told me and my attorneys that he needed a smoking gun, well, I lay awake at night thinking about anything that come up, and that's all that I could come up with.

Mr. STEWART. OK, and it hadn't come up before because you just hadn't put any significance to it, is that right?

Mr. FAIRCHILD. That's right.

Mr. STEWART. OK, and you did strike a deal under which you agreed to give complete and truthful testimony before the grand jury and at other trials?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and the prosecutors agreed that they would recommend no jail time for you, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and you went to the grand jury the second time?

Mr. FAIRCHILD. Yes.

Mr. STEWART. That's November of 1985—1984. I'm sure it's 1984.

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you understood at that time that you were about to testify on anything you had been able to come up with that might help them indict and convict Judge Nixon, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. I want to ask you to take a look at Exhibit N-24. This is a document—I believe it's two pages long, headed "Declaration of Wiley Fairchild," and on the second page it appears to have your signature. Is that your signature?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right, and it's dated March 4th of this year. Do you recall reviewing this document and signing it under oath at that time?

Mr. FAIRCHILD. Yes, yes.

Mr. STEWART. And you reviewed the statements in this document and they were accurate, is that right?

Mr. FAIRCHILD. Yes

Mr. STEWART. OK. I want to ask about a couple of those specific statements. On the first page in paragraph one, there is a description of the plea negotiations and the statement is made, and I believe you testified about this yesterday—I'm quoting here, "Under the final agreement, as I understood it, Mr. Weingarten said that the gratuity charge would be dropped if he later became convinced that there was no connection between my oil investment with Judge Walter Nixon and the handling of the drug charges against my son, Drew."

Mr. FAIRCHILD. Yes, he said that.

Mr. STEWART. He said that, and if Mr. Weingarten has submitted an affidavit in a pending case where he denies saying that, then your recollection is just different from his, is that right?

Mr. FAIRCHILD. This is what I—this is what I recollect him saying.

Mr. STEWART. OK, and you don't—and his denial is just something different from what you recall, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Do you have any knowledge as to why he might intentionally make a false statement about that?

Mr. FAIRCHILD. All I know is that this is the way I remember it.

Mr. STEWART. OK. You further on made the statement in paragraph two, "Mr. Weingarten also stated on several occasions in early 1985 that he would do what he could to help my son, Drew." Now, that's accurate, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and I take it that came up because there came a point when Judge McKenzie, who was the State court judge, announced that was not going to respect Drew's plea bargain, is that right?

Mr. FAIRCHILD. That's right.

Mr. STEWART. And he was threatening to send Drew away for five years in prison, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and so you had some conversations with Mr. Weingarten about your concerns that Drew was going to end up in prison?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK, and he told you what you signed to here, that he would do what he could to help Drew?

Mr. FAIRCHILD. Yes.

Mr. **Stewart**. And if Mr. Weingarten signed an affidavit saying that he didn't do that, didn't say that, then your recollection is just different, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and you don't know any reason why he would intentionally make a false statement on that, do you?

Mr. **Fairchild**. No.

Mr. **Stewart**. Now, on the second page of Exhibit N-24, paragraph numbered five, is the statement that, "Mr. Weingarten told me on several occasions that he needed a smoking gun to use against Judge Nixon," and you've said that here several times today.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and, again, if Mr. Weingarten submitted an affidavit where he said the only time smoking gun came up was when your lawyers mentioned it, then your recollection is just different, isn't it?

Mr. **Fairchild**. Yes, it's different.

Mr. **Stewart**. And you don't know any reason why Mr. Weingarten would make an intentionally false statement on that subject, do you?

Mr. **Fairchild**. No.

Mr. **Stewart**. In the final paragraph there numbered six, you say, "Based on Mr. Weingarten's statements at the time of my plea agreement, and based on our course of dealing in 1984 and 1985, I was led by Mr. Weingarten to believe that if my testimony at Judge Nixon's trial satisfied him, Mr. Weingarten would do everything he could to help me, including assisting in getting a pardon." That's accurate, isn't it?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And you said that yesterday, that you expected that Mr. Weingarten would do whatever he could to get you a pardon, is that right?

Mr. **Fairchild**. Yes, yes, I believe it.

Mr. **Stewart**. OK, and if he has said under oath that he didn't make that statement, then your recollection is just different, isn't it?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and you don't know why he would intentionally give a false statement on that subject?

Mr. **Fairchild**. No.

Mr. **Stewart**. Now, in paragraph six there, the last sentence says, "I also had the distinct impression that if my testimony at the Nixon trial did not please Mr. Weingarten, he would not help me." Is that accurate?

Mr. **Fairchild**. That's accurate.

Mr. **Stewart**. And that was based on what Mr. Weingarten said to you, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and would it be fair to say that when you took the stand at Judge Nixon's trial, you did hope to please Mr. Weingarten?

Mr. **Fairchild**. Yes, but when they had the plea bargain agreement, I was going to tell the truth.

Mr. **Stewart**. Sure, but you wanted to please Mr. Weingarten as well, didn't you?

Mr. **Fairchild**. Well, yes, sure.

Mr. **Stewart**. OK. I need to ask about something involving that first conversation with Carroll Ingram about Judge Nixon's investment. When you were interviewed by the FBI, and we went over this just a few minutes ago, in April of 1984, you told them Carroll Ingram came to see you in 1979 about that investment.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. That's right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and you've said that again here today.

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and Carroll Ingram has testified that it occurred in 1979 and so has Judge Nixon. Are you aware of that?

Mr. **Fairchild**. I was made aware of it in the last few days.

Mr. **Stewart**. OK. You know that now?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. When you testified in the grand jury in July of 1984—I believe the page number is 51—you testified that you couldn't remember the date when Mr. Ingram approached you for Judge Nixon's investment.

Mr. **Fairchild**. No. What I mean by that, I couldn't—the specific dates—it was approximate and I think the testimony was late 1979 or early 1980.

Mr. **Stewart**. OK, and you said the same thing when you were cross-examined by Judge Nixon's lawyer at Judge Nixon's trial. It's in the transcript at 688. Is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right, and I'm sorry if I have to make you uncomfortable with this question, but when you testified in the grand jury in November and when you testified in response to Mr. Weingarten's questions at trial, you said that that approach from Carroll Ingram came after Drew's drug bust in August of 1980. It's at least six months later.

Ms. Naughton asked you about that yesterday, actually.

Now, I need to ask you why you said it's 1979 to the FBI, why you said it was 1979 here, but when Mr. Weingarten had the hammerlock on you, you said it was after Drew's drug bust.

Mr. **Fairchild**. Well, I probably said that at trial, but I just don't remember saying that.

Mr. **Stewart**. At the trial, and it's at page 493 of the transcript, you said in response to Mr. Weingarten's questioning that Drew's case was pending in Federal court when Carroll Ingram approached you about an investment for Judge Nixon.

Mr. **Fairchild**. Yes, it was in early 1980 or 1979 when Carroll first approached me.

Mr. **Stewart**. OK, so that testimony in response to Mr. Weingarten's questions was not accurate?

Mr. **Fairchild**. When did Drew's case start in Federal court?

Mr. **Stewart**. Well, it never actually got into court. The arrests did not occur until August of 1980, which is more than six months later.

Mr. **Fairchild**. It happened in late 1979 or 1980. If that's what I said there, it's just wrong.

Mr. **Stewart**. Do you have any recollection that Mr. Weingarten encouraged you to give that wrong date?

Mr. **Fairchild**. No.

Mr. **Stewart**. Do you have any explanation for why you gave that wrong date?

Mr. **Fairchild**. No.

Mr. **Stewart**. You can't recall the reason why you did that?

Mr. **Fairchild**. No.

Mr. **Stewart**. Do you recall whether you did it to try to please Mr. Weingarten?

Mr. **Fairchild**. No.

Mr. **Stewart**. You just don't recall one way or another?

Mr. **Fairchild**. No.

Mr. **Stewart**. I want to ask just a couple questions about this pardon issue, your interest in a pardon. A pardon is real important to you, isn't it?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. You care very strongly about the honor of the Fairchild name?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And you think a pardon is something to get you out of this mess you've been in for several years?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. It would also allow your company to bid on Federal jobs, which they can't do right now, isn't that right?

Mr. **Fairchild**. Just a few jobs that we can't bid on.

Mr. **Stewart**. OK, but you have always had a strong interest in that pardon?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Let me ask you about this question that has come up a couple of times concerning your meeting with Reid Weingarten and John Baltar during the trial when you discussed your testimony. Do you recall that meeting?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. All right. I'd like to show you what is an attachment to Exhibit N-25. That's a declaration of John Baltar which he has signed. I'm not asking about the declaration, but the attachment to it, which is a three-page document. In the exhibit book it has been reduced in size and I have a larger copy of it which is a copy of the original which may be easier to read.

For the subcommittee's information, it's Exhibit N-25, Attachment 1.

Do you recognize that document?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. What is it?

Mr. **Fairchild**. Relationship with Drew and relations with Carroll.

Mr. **Stewart**. I'm sorry. Do you recall when you first saw it?

Mr. **Fairchild**. No.

Mr. **Stewart**. OK. Was it prepared as a result of the meeting you had with Mr. Weingarten and Mr. Baltar?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and this is what was typed up from the notes that Mr. Baltar prepared, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Can you describe how that meeting went—now, I'm not asking about that piece of paper, in particular—who started the conversation and how the conversation proceeded?

Mr. **Fairchild**. Mr. Baltar went up to the Howard Johnson and picked Mr. Weingarten up and they come in my office and they did most of the talking, and I don't—and Baltar was making some—taking notes.

Mr. **Stewart**. OK. So, as you describe it, it was more a conversation between Mr. Baltar and Mr. Weingarten. Is that accurate?

Mr. **Fairchild**. Yes, it was more between them two.

Mr. **Stewart**. OK, and what were they discussing?

Mr. **Fairchild**. The questions that would be asked.

Mr. **Stewart**. The questions that would be asked of you when you were testifying?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and was Mr. Baltar offering possible answers to the questions?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and then you said he was making notes. Would he write down the answer that he and Mr. Weingarten agreed was accurate or that they liked?

Mr. **Fairchild**. Yes. This document come out of the notes that Baltar had taken in that meeting.

Mr. **Stewart**. OK, but I'm trying to zero in on this give-and-take which I'm not sure I understand totally. Mr. Weingarten would say, I take it, I'm going to ask about "x," and Mr. Baltar then would reply, well, the answer would be something like this. Is that accurate?

Mr. **Fairchild**. To the best of my memory, yes.

Mr. **Stewart**. OK, and then would Mr. Weingarten say fine, and then Mr. Baltar would make a note, or would they talk about the answer for a while?

Mr. **Fairchild**. I just not—my memory is just not that clear.

Mr. **Stewart**. OK, but there were points—were there points at which they discussed possible answers to different questions, different alternative answers?

Mr. **Fairchild**. I'm sure there was.

Mr. **Stewart**. OK, and you were present during the whole conversation?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and do you recall Mr. Weingarten suggesting whether any particular answers ought to be given or would be accurate or appear to be accurate?

Mr. **Fairchild**. No, I don't.

Mr. **Stewart**. You just don't recall it one way or another?

Mr. **Fairchild**. No.

Mr. **Stewart**. Now, when were those notes typed up?

Mr. **Fairchild**. After Mr. Weingarten left the office.

Mr. **Stewart**. OK, and I believe you testified yesterday that you couldn't say for sure whether Mr. Weingarten reviewed those notes or whether he'd never actually saw what Mr. Baltar had written down, is that right?

Mr. **Fairchild**. I don't know whether he saw them or not.

Mr. **Stewart**. OK, but he sure knew that the whole process was going on, that Mr. Baltar was preparing those notes?

Mr. **Fairchild**. That was the purpose of him coming to the office.

Mr. **Stewart**. OK, and did you ever have a conversation with Mr. Weingarten thereafter where you discussed the fact that this document, this attachment to Exhibit N-25, existed, and did he ever see you studying this or looking at it?

Mr. **Fairchild**. Well, I had it with me when I was in the witness room and he come back there, and Mr. Baltar saw me reading it in the witness room.

Mr. **Stewart**. OK. So you're sitting there reviewing this before you testify, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And Mr. Weingarten walks in on you while you're sitting there reviewing this?

Mr. **Fairchild**. To the best of my memory, yes.

Mr. **Stewart**. OK, and that was right before you testified at Judge Nixon's trial?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Did you have any conversation with him at that point right before you go on the stand about questions he's going to ask or answers you're going to give?

Mr. **Fairchild**. I could have, but there again my memory is just not that good.

Mr. **Stewart**. But you did review this document, this attachment to Exhibit N-25, on at least several occasions before you testified?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. At the point when Mr. Weingarten visits you in the witness room, didn't he say something like, now, we've got all our testimony straight, don't we, or you're feeling comfortable about what you're going to say, that kind of thing?

Mr. **Fairchild**. Yes, I memorized that, and I don't remember specifically what he said, but——

Mr. **Stewart**. OK. Was it something to the effect of you've got down what your answers are going to be?

Mr. **Fairchild**. Well, I'm sure he went over this with me, but there again my memory is not that good. He come back in the room, but I don't remember—and I'm sure we discussed it, but just what he said and what I thought or said, I don't remember.

Mr. **Stewart**. Do you recall whether you went over this with him at that time?

Mr. **Fairchild**. Well, I had it in my hand.

Mr. **Stewart**. OK, so he had to see that?

Mr. **Fairchild**. Yes, he knew I was studying it.

Mr. **Stewart**. Right. And, in fact, you just said you were memorizing it?

Mr. **Fairchild**. Yes, I was; I was trying to.

Mr. **Stewart**. OK. I wanted to ask you just about one statement here on the second page of this document. The question was—it's written out here—have you made a deal to testify in this case. The indicated answer is no, but you had made a plea bargain, hadn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And the plea bargain required you to testify when the Government asked you to, didn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. I want to go back to the meeting in your office with Mr. Weingarten and Mr. Baltar. Was there a discussion at that time of the tape recording that Skip Jarvis had made when he came out to your office back in April of 1984? Was that a subject you discussed?

Mr. FAIRCHILD. It could have been, but really and truly, I just don't remember.

Mr. STEWART. So you have no recollection of that?

Mr. FAIRCHILD. No.

Mr. STEWART. We could ask Mr. Baltar if he recalls that.

Mr. FAIRCHILD. Yes, and his memory—I wouldn't dispute what Mr. Baltar said.

Mr. STEWART. OK. Do you have any recollection—here, I'm just trying to refresh your recollection, Mr. Fairchild. I understand you said you're not sure, but let me see if I can help turn on a light or two.

Do you have any understanding that Mr. Weingarten wanted you to repudiate that tape recording?

Mr. FAIRCHILD. Did what?

Mr. STEWART. Mr. Weingarten wanted you to say that tape recording included false statements by you?

Mr. FAIRCHILD. I don't remember telling Mr. Weingarten—trying to get me to repudiate what was on the tape.

Mr. STEWART. You just don't have a recollection one way or another?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. Do you have a recollection that Mr. Weingarten tried to get you to repudiate what you had told to the FBI back in April of 1984?

Mr. FAIRCHILD. No, I don't remember that.

Mr. STEWART. You just don't remember it one way or another?

Mr. FAIRCHILD. No.

Mr. STEWART. Again, we'd have to speak to Mr. Baltar about that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Now, was Mr. Baltar doing anything else for the prosecutors, performing any other functions for them that you were aware of?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Do you recall any of those specifically?

Mr. FAIRCHILD. He was helping them pick the jurors.

Mr. STEWART. You knew he was doing that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you didn't have any problem with him helping the Government on that, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. You thought that might help you, didn't you?

Mr. FAIRCHILD. Yes, I did.

Mr. **Stewart**. OK, and so he helped picked the jurors in Judge Nixon's case, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK. Let me just kind of summarize where we are here, and I'm going back to the whole thing here. When you made that investment with Judge Nixon, you did not intend to have him do anything illegal and you felt like you'd charged him a fair price, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. OK, and the investment with Judge Nixon had nothing to do with your son, Drew?

Mr. **Fairchild**. No.

Mr. **Stewart**. You told the truth in the grand jury as best you could recall it, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. And then after you were indicted, you made a deal under which you thought you'd get no jail time, is that right?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. How much jail time did you get?

Mr. **Fairchild**. Six days in a halfway house.

Mr. **Stewart**. Then you testified for the prosecution in Judge Nixon's case, and it was your understanding that the prosecutor would help you get a pardon, is that right?

Mr. **Fairchild**. He never specifically said that he would—I don't—he led me to believe that he would help get a pardon.

Mr. **Stewart**. All right, and you tried to testify in a way that would please Mr. Weingarten?

Mr. **Fairchild**. Yes, as long as I stayed with the truth.

Mr. **Stewart**. Sure. Did he give you any help getting a pardon?

Mr. **Fairchild**. No. The deal—he made it plain after Judge Nixon's case is finally settled. I hadn't asked him.

Mr. **Stewart**. You have to go back and ask him again after the case is settled?

Mr. **Fairchild**. Yes.

Mr. **Stewart**. Have you received a pardon?

Mr. **Fairchild**. No.

Mr. **Stewart**. In your opinion, has that all involved—what we just reviewed, did that involve fair treatment of you by the Government?

Mr. **Fairchild**. Not exactly.

Mr. **Stewart**. Thank you, Mr. Chairman.

Mr. **Edwards**. Do members of the committee wish to ask any further questions of Mr. Fairchild?

Mr. **Sensenbrenner**. No, Mr. Chairman.

Mr. **Edwards**. Mr. DeWine?

Mr. **DeWine**. No, Mr. Chairman.

Mr. **Edwards**. Mr. Conyers?

Mr. **Conyers**. I don't have any questions.

Mr. **Edwards**. I have a couple here that are—at your sentencing, what did the Government recommend at your sentencing, Mr. Fairchild?

Mr. **Fairchild**. I don't remember, but he recommended, to the best of my remembrance, that the judge don't give—asked the judge not to give me no time.

Mr. **Edwards**. No jail time?

Mr. **Fairchild**. Yes.

Mr. **Edwards**. Now, have you any—do you know why the Government requested that the judge not give you jail time? Why do you think the Government made that recommendation?

Mr. **Fairchild**. Well, to—well, at that time I think Weingarten—I've got my own opinions what happened, but probably Weingarten, he said that as much for my benefit as it was to the judge's benefit.

I understand from the probation officer that the judge had made up his mind four or five days before he sentenced me and to—before he sentenced me, and the judge and the probation officer was just as nice to me as they could be, you know, and let me pick the halfway house and let me carry my own furniture in there and a remote control TV.

And I'd get in there at eight o'clock, eight, nine o'clock, and get up and leave the next morning at four or five, whenever I wanted to.

Mr. **Edwards**. But Mr. Weingarten recommended to the judge that you not be sentenced to any jail time, is that correct?

Mr. **Fairchild**. Yes.

Mr. **Edwards**. And why do you think he made that recommendation? Why do you think Weingarten asked the judge to give you no time at all?

Mr. **Fairchild**. Well, my age, and that I didn't have no—I had a good reputation, and that it wouldn't be fair.

Mr. **Edwards**. Did Mr. Weingarten tell you what to say at sentencing? Did he suggest what you should say to the judge?

Mr. **Fairchild**. No, he didn't, but he told my attorney what for me to say.

Mr. **Edwards**. What did he tell your attorney for you to say?

Mr. **Fairchild**. That I had made a mistake and that I was sorry. I can't quote every bit of it, and me and my attorneys was going over it that night in the hotel before I was to be sentenced the next morning. And Mr. Hess had a trial going on and he handled my case and he couldn't be there and the judge wouldn't put off the sentencing, and he sent Richard Horn over there and I was memorizing what Weingarten told my attorney to say.

And this Mr. Horn says, and add that you done it to help your son, Drew, and I says you want me to tell a damn lie? He says, no, no, no, I don't want you to tell a lie. I says that's what you're suggesting, and so—but I did go ahead and say what Mr. Weingarten told my attorney to say.

Mr. **Edwards**. Thank you. My last question, Mr. Fairchild, is did you ever discuss with Judge Nixon the Drew Fairchild criminal case.

Mr. **Fairchild**. Just what I've done here this morning and yesterday. Specifically, no, I never asked the judge to help Drew out, no.

Mr. **Edwards**. You didn't go into detail as to what happened and details of the case?

Mr. **Fairchild**. No.

Mr. **Edwards**. Just the blackmail aspects of the case as it was connected to Drew?

Mr. **Fairchild**. Yes.

Mr. **Edwards**. Well, I have no further questions and, Mr. Fairchild, the committee is very grateful for you to have come all the way up here without a subpoena. We appreciate your straightforward testimony, and thank you very much.

Mr. **Fairchild**. Thank you.

Mr. **Edwards**. Mr. Holmes.

[Witness sworn.]

Mr. **Edwards**. Mr. Peter Keith, assistant counsel, will question you, Mr. Holmes.

Mr. **Keith**. Thank you, Mr. Chairman.

Mr. Holmes, could you state your full name for the record, please?

TESTIMONY OF PAUL HARDIN HOLMES

Mr. **Holmes**. Paul, P-a-u-l, Hardin, H-a-r-d-i-n, Holmes, H-o-l-m-e-s.

Mr. **Keith**. And you're also known as Bud?

Mr. **Holmes**. B-u-d, yes, sir.

Mr. **Keith**. OK. Why don't we begin by having you tell us a little bit about yourself. How old are you, sir?

Mr. **Holmes**. I'm 55. I'll be 56 on October 29th of this year.

Mr. **Keith**. Are you married, sir?

Mr. **Holmes**. I am.

Mr. **Keith**. Any children?

Mr. **Holmes**. I have two children.

Mr. **Keith**. And where do you live, Mr. Holmes?

Mr. **Holmes**. I live in primarily, I guess, Slidell, Louisiana, now.

Mr. **Keith**. Do you also have a home in Hattiesburg?

Mr. **Holmes**. I do.

Mr. **Keith**. And tell us a little bit about your background. Did you grow up in Hattiesburg, sir?

Mr. **Holmes**. I grew up in Hattiesburg, son of D.W. Holmes and Mary Lee Hardin Holmes. My father was mayor of Hattiesburg when he got killed. My mother succeeded him as mayor. I had a sister that worked here in Congress, worked for Frank Smith when he was a Congressman.

I graduated from the University of Southern Mississippi. I went in the United States military as an officer, came back, served the National Guard, discharged as a captain honorably; graduated from the University of Mississippi Law School in 1958, returned to Hattiesburg in private practice.

That year I managed, I believe it was Bill Collimer's campaign. He was running, I believe, against Mr. Holleman over there that year, and——

Mr. **Keith**. What post was that for, sir?

Mr. **Holmes**. That was for the—I guess at that time it was the Sixth Congressional District, State of Mississippi.

Mr. **Keith**. And after you began the private practice of law in 1958, what sort of practice did you have, sir?

Mr. **Holmes**. Personal injury, primarily.

Mr. **Keith**. Were you out on your own or were you with other attorneys?

Mr. HOLMES. The second year, Jim Dukes graduated from law school in 1959. He came in and we formed a partnership called Holmes and Dukes. We practiced together.

Mr. KEITH. Was that a trial practice in both State and Federal courts?

Mr. HOLMES. Yes, sir.

Mr. KEITH. And were you admitted to the bar in various courts, sir?

Mr. HOLMES. Yes, including the United States Supreme Court.

Mr. KEITH. OK. Now, in addition to being a practicing lawyer, were you also a businessman or an entrepreneur, or whatever you want to call it?

Mr. HOLMES. Yes, sir. I got involved in various business relationships—some were good, some were bad—the Buick automobile agency there in Hattiesburg, among others.

Mr. KEITH. Is that one that you still own today, sir?

Mr. HOLMES. Yes, sir, still own it.

Mr. KEITH. And what other sorts of businesses did you become involved in?

Mr. HOLMES. Had a plumbing business for a while. We had a farm that we operated, about a 2,000-acre farm in Hattiesburg. We owned an interest in the Holiday Casino out in Las Vegas, which we sold out.

Mr. KEITH. Will you tell us a little bit about that particular——

Mr. HOLMES. Yes, sir. A close friend of my late father's lived in Hattiesburg during World War II, subsequently moved to the Mississippi Gulf coast, and back prior to the enactment of Federal laws against going across State lines for gambling, there was a certain amount of—they referred to it as gaming on the Mississippi Gulf coast.

And when the—I believe it was after the Kefauver committees, and so forth—anyway, whenever they passed the law saying that you could no longer go across State lines, the people in Mississippi basically that were in that profession moved to Nevada.

And I maintained my friendship with the late T.W. Richardson, who is a friend, and he was in Las Vegas and I believe Kenneth Wilson did not want to go into the gaming. They had a Holiday Inn there and so they approached a number of different business people in Nevada, and so primarily a group of doctors and lawyers put up the money for just an investment. I turned out to be very profitable.

Mr. KEITH. You ended up purchasing an investment?

Mr. HOLMES. Yes, I ended up purchasing, I believe it was five percent of the local doctors and doctors out in Nevada, and I believe Little Jimmy Bilbray, who is a Congressman here—his father was one of our partners. He's a Congressman from Nevada now. He was one of our partners.

Mr. KEITH. When did you sell that interest, sir?

Mr. HOLMES. 1979, I believe.

Mr. KEITH. OK. Could you pull the microphone over just a little bit?

Mr. HOLMES. All right, sir.

Mr. KEITH. Your voice is trailing off just a tad.

Mr. HOLMES. All right.

Mr. KEITH. Did there also come a time when you became a sports agent?

Mr. HOLMES. Yes, sir. 1973, I represented Ray Guy and then 1974, Fred Cook, who played in Baltimore; I believe you and I talked about him. And in 1975, Walter Payton and Robert Brazile and a whole group of them came out of Jackson State and so I started representing them.

Mr. KEITH. Each of those individuals ultimately played in the National Football League?

Mr. HOLMES. Yes, sir; yes, sir.

Mr. KEITH. And you continued to represent them and other individuals as a professional sports agent?

Mr. HOLMES. Yes, sir.

Mr. KEITH. Did you also have involvement in the restaurant business?

Mr. HOLMES. Yes, sir. We had restaurants on the Mississippi Gulf coast, Yesterdays—in Mobile, Alabama, Yesterdays; subsequently formed a little group, basically more of a nightclub than a restaurant, but it had food, you know, with it, called Bonnie and Clyde's.

And then subsequently we formed another group catering to the 1950s era called Studebaker's, and we formed that in Mobile and it was very successful.

Mr. KEITH. And as a result of that, you've been involved in a number of different restaurants all over the country?

Mr. HOLMES. Yes, sir, we have. As a matter of fact, I just opened one in a partnership out in Hawaii this past month.

Mr. KEITH. All right. Now, Mr. Holmes, in addition to the private practice of law that you've told us about and the various business interests, did there also come a time when you entered public service?

Mr. HOLMES. Yes, sir. In 1979, they had enacted the new law saying that you could not have private practice and also be district attorney. So a young man by the name of John Mark Weathers, who had already received the nomination, Democratic nomination—he had no opposition—declined to accept the job because it had to be full-time. I think it only paid like $35,000.

Mr. KEITH. And specifically which job was this?

Mr. HOLMES. This was district attorney.

Mr. KEITH. Of what areas?

Mr. HOLMES. Forrest and Perry County. That would be Hattiesburg and——

Mr. KEITH. OK, sir.

Mr. HOLMES. All right.

Mr. KEITH. And is that an elected office?

Mr. HOLMES. Yes, sir.

Mr. KEITH. And that is the office of local criminal prosecutor?

Mr. HOLMES. Right.

Mr. KEITH. OK.

Mr. HOLMES. And so it looked like the gentleman that was running that was very unacceptable to the black community because he had been heavily involved with the Ku Klux Klan earlier looked like the only person running, so a number of people came to me and flattered me and said, you sold out of Las Vegas and you got more money than other local lawyers and you can afford to take the job. Would you be willing to take it? So I agreed to serve for four years, and four years only.

Mr. KEITH. You ran in the election and you were elected?

Mr. HOLMES. Yes, I ran and was elected.

Mr. KEITH. OK, and did you serve more than one term, sir, or did you——

Mr. HOLMES. No, sir. I made it very plain at the outset that I would serve one term and one term only, and that they could—there was an assistant district attorney named Glenn White that a lot of people—tried to get him to run, but he didn't feel like—since he'd only had about like a year's experience out of law school, he felt like he needed more experience, and so——

Mr. KEITH. So you were local district attorney in Hattiesburg for the four years 1980 through 1984?

Mr. HOLMES. That's correct.

Mr. KEITH. OK. Now, Mr. Holmes, I'm going to be asking you a number of questions about the Drew Fairchild case, your relationship with Judge Nixon. Many of those questions were asked of you at trial. You did testify at Judge Nixon's trial?

Mr. HOLMES. I did.

Mr. KEITH. And were you on the witness stand for a long period of time?

Mr. HOLMES. Two days, I believe.

Mr. KEITH. Were you subject to cross-examination by Judge Nixon's lawyer?

Mr. HOLMES. Yes, sir.

Mr. KEITH. And was that a lengthy cross-examination?

Mr. HOLMES. Extensive, yes, sir.

Mr. KEITH. Have you had the opportunity to read your trial testimony?

Mr. HOLMES. I did.

Mr. KEITH. And based upon your recollection of what you said at trial and your reading of the trial testimony, is there anything that you testified to at Judge Nixon's trial that was not truthful, to your knowledge?

Mr. HOLMES. No, sir. There would be some—I'm sure if you went through it, you could expand on certain interpretations of words or things like that. And looking back over it, there would be some little minor areas in there that—I can't remember any specific—that in reading it, I'd say, well, I don't remember or, you know, it would be—but, basically, no, sir; it was very truthful.

Mr. KEITH. When you testified at trial in Judge Nixon's case, you testified truthfully, to be the best of your ability?

Mr. HOLMES. Yes, sir.

Mr. KEITH. OK. Why don't you tell us a little bit about your relationship with Judge Nixon? How long have you known him, sir?

Mr. HOLMES. I met him approximately 1959 or 1960.

Mr. KEITH. And how did you come to meet him?

Mr. HOLMES. I was just, like I say, just starting out, probably about my second year and I had a case on the Mississippi Gulf coast down in Gulfport where the courthouse was at that time. I don't believe we had one in Biloxi. We might have, but anyway we were—I was getting ready for a trial and Judge Nixon was a very popular and I'd say, without a doubt, the most successful trial lawyer in the State, and particularly down there very popular; everybody liked him.

And he was also very respected by the people on the other side, the defense, because he had the biggest plaintiffs' practice, I'd say, probably in the South at that time, or that would be my opinion.

And he came up to me and we were sitting there talking. I had a case following his, and while the jury was out he asked me what we had and he had been very gracious. And I told him what the facts in the case were and he said it seems like they ought to pay you, and he named the figure and I said, Lord, I'd be glad to take that.

And he said, well, go tell them that I'm associated with you in the case and I'm going to help you try it, and I did and that put fear in their heart and they came back and paid me. And I tried to pay him, tried to, you know, pay him the normal association fee and he just wouldn't accept it. He says, no, I'm just glad to help you out, you know; I'm glad to see justice done, so to speak.

And I then I got very, very enamored and I was very ingratiated to him.

Mr. KEITH. So that after that incident—and I guess we're talking about, what, a period of about 20 years or so—you developed a——

Mr. HOLMES. Yes, sir. That would be 1970, at the latest, yes, sir, so that would be at least 18 years, yes, sir—excuse me—1960, I'm sorry. That would be at least 28 years.

Mr. KEITH. So that over that period of time you've developed a close friendship with Judge Nixon?

Mr. HOLMES. I would say so, yes, sir.

Mr. KEITH. Can you describe that friendship for us, some of the things you did together?

Mr. HOLMES. Well, we—I guess over the years whenever he would—after he was on the bench, at that time there were only three judges, Judge Cox, Judge Russell, and Judge Nixon, in the whole southern district for the south of Mississippi. I mean, I know it's kind of hard to comprehend in this big towns where you all have umpteen Federal judges, but down there I grew up with just one Federal judge in the whole southern end, part of the State.

But when he was the third one that come on the bench, I mean everybody knew him and it was a very friendly, congenial group of people, you know, the judges were, and everybody knew them on a very social, personal basis.

But over the years, you know, we hunted together and fished together, and things of that nature.

Mr. KEITH. Would you describe this as a very close friendship?

Mr. HOLMES. I would consider it, yes, sir; at least I considered it very close.

Mr. KEITH. Did you exchange favors with Judge Nixon?

Mr. HOLMES. In what regard? I mean——

Mr. KEITH. Well, either gifts or tried to help him out on certain occasions, just as he might help you out?

Mr. HOLMES. Over a period of time, there would be things like, you know, they've bought cars and paid for them. His children—his boy came up to Southern. I remember I helped his boy, you know, get an apartment, you know, and things of that nature.

And later on when his son was taking flying lessons, going in the air, we had—and I left out my aviation company. We had a charter aviation business and so he worked on a—the best I recall, on a per-trip basis for us, and things of that nature. I stayed in his home and he stayed in my home a few times, not——

Mr. **KEITH**. Did there come a time when Judge Nixon was divorcing his first wife?

Mr. **HOLMES**. Yes, sir, he went through a—you know, I mean it was very tragic, you know, but those things happen and he went through it, and I guess I confided in him at that time and we talked and——

Mr. **KEITH**. Were you helpful in helping him through that divorce?

Mr. **HOLMES**. Maybe on a personal basis, but I was not his attorney, no more than if he wanted to talk about his situation.

Mr. **KEITH**. Have you vacationed with Judge Nixon?

Mr. **HOLMES**. Yes, sir. He rented a home—he and his family rented a home down in Destin and I drove down there on two different occasions and spent either one or two nights down there while they were in Destin, Florida.

When he and his wife got married, I had an airplane that was going on a trip out to the West Coast and so I arranged it—rather than them just dead-heading out there, they rode on the airplane, I believe, to San Francisco.

At that time, I owned interests there at the Holiday Inn in Nevada and I told him, well, why don't you all meet me back over in Las Vegas? So I went out there and met him and his wife in Las Vegas.

Mr. **KEITH**. Did you charge Judge Nixon and his wife anything for that travel or was that just a personal favor as a friend?

Mr. **HOLMES**. No, sir. I never charged anybody in my life for it. I mean, I didn't treat him any different than I've ever treated anybody.

Mr. **KEITH**. Did you on occasion——

Mr. **HOLMES**. He would have paid if I'd asked him. You know, I mean, he always volunteered, always wanted to do his part or, you know, share. It wasn't any——

Mr. **KEITH**. Did there come a time when Judge Nixon intervened on behalf of your current wife, Marsha, to help her?

Mr. **HOLMES**. Yes, sir, which I appreciated. I mean——

Mr. **EDWARDS**. Counsel, we will recess for ten minutes while there is a vote in the chamber.

Mr. **KEITH**. Thank you, Mr. Chairman.

[Recess.]

Mr. **EDWARDS**. The subcommittee will come to order.

Mr. Keith, will you proceed, please?

Mr. **KEITH**. Thank you, Mr. Chairman.

Mr. Holmes, before the recess you were about to describe for us briefly, I think, an incident in which Judge Nixon attempted to help a woman by the name of Marsha, your former girlfriend and now your current wife.

Mr. **HOLMES**. That's correct.

Mr. **KEITH**. Can you tell us a little bit about that?

Mr. HOLMES. I had told him that she had been fired. She was a CPA trying to get in—I believe all CPAs—you got to work for a firm for one year; that she had been fired, and it was just on a very personal, casual basis.

And, of course, he knew Marsha and she had been fired over something I thought was extremely unfair, and he, because of that, brought in or asked me—or he brought in the attorney for the CPA firm, who was a close personal friend with the fellow that had fired her, and talked to him in an effort to try to persuade him to lean on the fellow to rehire her. He did it as a personal favor to me.

Mr. KEITH. Did you come to learn exactly what Judge Nixon had said to that lawyer?

Mr. HOLMES. Well, I was in there, yes, sir.

Mr. KEITH. And what was said, sir?

Mr. HOLMES. He said that, you know, that a lot of times that people from time to time have to testify in court, and it would seem to me like that if this man—you know, certainly not saying that I would do it, but it would appear to me that if a man showed no more compassion than that, it might be that I'd have a hard time showing compassion for him if he was up pleading for some tax client, you know, if he was in front of me on the thing, or words to that effect.

Mr. KEITH. Now, you've described for us at some length some details about your friendship with Judge Nixon. Is it fair to say that you know the judge fairly well?

Mr. HOLMES. Yes, sir, I would say so.

Mr. KEITH. Is it also fair to say that you know how to interpret his behavior as one friend might be able to interpret the behavior of another friend?

Mr. HOLMES. Unless I misunderstood it. You know, I mean just like anybody, you're around them and you can predict what you think. So I base my prediction just on what my relationship with him has been.

Mr. KEITH. OK. Let's take a few minutes now to have you describe for us your relationship with a number of other individuals——

Mr. HOLMES. All right, sir.

Mr. KEITH. —who have been the subject of this inquiry. Do you know a fellow by the name of Wiley Fairchild?

Mr. HOLMES. I do.

Mr. KEITH. Can you tell us a little bit about your relationship with Mr. Fairchild?

Mr. HOLMES. Mr. Fairchild had always been a—well, the Fairchild Construction Company in Hattiesburg had always been one of the dominant financial institutions. I'd say they had more people work for them out there and they had far-flung business all over the, I guess, United States.

Particularly during the road-building era, the big era when the interstates were going in, you know, they had work from, I guess, all over the United States, and as a result many, many, many people in our area worked out there. And so they did—and Mr. Fairchild is always a politically active-type individual. He was always very generous, so to speak, with his money at the universities, and so forth.

Mr. **Keith**. Can you describe——

Mr. **Holmes**. He would always get very, very active in everything. It's my understanding he was George McGovern's largest financial contributor when he ran for President of the United States. I mean, he would just get very active in them, in all politics from a beat race on up.

It's my understanding, and I have no way of proving this, but he has a reputation that if somebody was running for JP in the State of Oregon and they wrote to Fairchild Construction Company for a contribution for a JP donation out in the State of Oregon where he never would go, but it would send them some money. He would just stay very active in it.

Mr. **Keith**. When you were campaigning for district attorney, was Mr. Fairchild a supporter of yours?

Mr. **Holmes**. I have no way of knowing. I went by to see him because—and told him I did not want any money; that I really thought I'd be flattering him because I said, you know, poor Wiley; every time he looks up, here's some politician coming by to see him and all they ever want is money.

And I know that, you know, Wiley has to feel like that and I went by and told him I thought he was a great citizen there and had a tremendous impact there and I wanted to come by and just see him and tell him I wanted his vote.

I knew at that time he and a former close, close friend of his, O.L. Sims, were at outs and they had some litigation going. I told him I was also going by to see O.L. and, you know, see him.

But I did ask him—later on, I found out he perhaps made a contribution to me through his attorney, Buz Cook, you know, I think maybe, but I'm sure he probably contributed to my opponent, also. I would assume he did.

Mr. **Keith**. Did you ever have any business dealings with Mr. Fairchild?

Mr. **Holmes**. I represented his brother one time when his son got killed in a tragic accident and then had a—one time, my firm was involved in a lawsuit where we represented someone that Wiley was backing financially. But as far as having business investments with him, no.

I talked—one time, they drilled a well up in Kentucky and Sam Hall, who was working for him at that time—we contributed—I say contributed—we'll call it a contribution because they were trying to abandon a well up in Kentucky. But I believe that Wiley—or the oil interests had control of it.

We used to meet out there at the Fairchild place. I don't remember Wiley ever being in the meetings, but——

Mr. **Keith**. How about Wiley's son, Drew Fairchild? Do you know Drew?

Mr. **Holmes**. I met Drew. I didn't even know Wiley had a son. Drew is older than I am, and one time John Paul Roblin, who was the one who got Mr. Fairchild involved with George McGovern—John Paul was working with Mr. Fairchild at that time, I guess, in the same capacity that Mr. Baltar worked for him.

And John Paul asked me if I would arrange a trip down to New Orleans for one of the Saints football games and take Mr. Fairchild. Mr. Fairchild had a son; that he was trying to get his son kind of involved with knowing, quote, unquote, a better brand of people is the way I remember it.

And I did; I arranged a trip down to New Orleans, one of the New Orleans Saints games. And we went by John Mecom's, who was the owner, you know, of the Saints at that time; went by his apartment and went out, and that was the first time I'd ever met—didn't even know Wiley had a son.

Apparently, I learned later that Drew was by Wiley's first marriage, and I believe that he grew up in Florida. That's the reason no one knew.

Mr. Keith. Before you became involved in the Drew Fairchild drug case as district attorney, did you have any other dealings with Drew Fairchild besides that which you've just described?

Mr. Holmes. One time later on, Drew had bought the Hattiesburg Aviation, or he had gotten the lease out at the airport. It was a little, small airport; don't even have an airline that comes in there since Hattiesburg and Laurel developed one.

And the person that my wife was working for then after she left Carlton Nicholson was a boy by the name of Jack Burke, who is a CPA, and Jack and a boy named Doc Roberts had sold out or had lost the bid. They had much of the parts stored out there and Jack was broke and he came to me, I want to say like on the 4th of July and said that Drew was going to make them move all their equipment and all of their parts to their airplanes over to another hangar unless he came up—I think it was about like $1,000, I think was the figure.

He wanted to know if he could borrow $1,000 from me. I said sure, so—and I think Doc was out of town. I said sure, and so I wrote a check for $1,000 and gave it to Jack to take out there and give it, you know, to whoever it was.

And so he came back and he said Drew Fairchild said he would not accept my check, that he wanted cash. And, you know, that kind of made me mad and I said what—you know, because I think I probably had $20,000, $30,000 in my checking account at that time. So I had to go cash the check, you know, get the money, send it out there to Drew.

Mr. Keith. How about an individual by the name of Carroll Ingram? Do you know Carroll?

Mr. Holmes. Yes, sir.

Mr. Keith. Can you tell us a little bit about your relationship with him?

Mr. Holmes. Yes, sir. Carroll—I originally met Carroll when he was working for a close friend of mine by the name of Milton Waldof, and Carroll was working his way through the University of Southern Mississippi.

Carroll, I believe, is a distant nephew or a cousin of Mr. Fairchild. They all are from up in the Seminary-Sanford area; I mean, that's where they all came from. That used to be an old sawmill type area back around the 1900s.

And Carroll worked down there, went on through law school, came back and came back to practice with Francis Zachary and Jack Weldy, who was a judge, and they formed a partnership called Zachary, Weldy, and Ingram.

Carroll then later got elected to the senate, very, very popular political—Carroll then got involved in various interests around there, primarily in the savings and loan business where he is now, and he's very active politically.

Mr. KEITH. How about an individual by the name of George Phillips?

Mr. HOLMES. Yes, sir.

Mr. KEITH. Do you know Mr. Phillips?

Mr. HOLMES. Right. George was a practicing attorney there in Hattiesburg, elected to county attorney, then reelected county attorney when I was district attorney. He defeated Francis Zachary's son and there was a rift there, actually, between Carroll—just a little local politics is all it was.

But, anyway, when George was appointed to the United States attorney's position in Jackson, then Tom Zachary came up and took his place, and that was the person that George had defeated, you know, for county attorney.

Mr. KEITH. And are you good friends with Mr. Phillips?

Mr. HOLMES. Yes, sir, I would think so. I haven't talked to him since all this came up, but I would assume so.

Mr. KEITH. All right. Now, let me take you back in time to a time when Judge Nixon mentioned to you that he was planning on doing some investments with Wiley Fairchild.

Mr. HOLMES. All right.

Mr. KEITH. Do you remember that occasion, sir?

Mr. HOLMES. The occasion I remember—I want to say that we were all out at a local restaurant with Carroll Ingram and I want to say Jolly Matthews, who is Carroll's partner, because it's Ingram and Matthews. And we were just all out eating supper just at a local cafe, as I recall it. That's the first time I remember.

Mr. KEITH. Did there come a time when Judge Nixon asked you about Wiley and his reputation?

Mr. HOLMES. Right, he asked me. He said that he had an opportunity to make an investment with Wiley Fairchild and that he didn't know him or didn't know anything about him, which I remember that was kind of surprising to me because I thought that everybody knew Wiley Fairchild.

And, of course, Judge Nixon was very, very popular and very well known and, you know, knew everything that went on pretty well in that area. But he said he hadn't met him or didn't know him or maybe didn't know that much or asked me about him. Well, that was the impression I got, anyway.

And I told him that Mr. Fairchild was very, very keen on getting involved with people of popularity, and that I thought that if Mr. Fairchild invited him to make some investments with him, as I recall, I said, you know, I think that if he did, Wiley is on pride; he'd see to it that you wouldn't lose money.

I mean, I think I used the terminology I think Wiley would go out and pour oil down in the hole before he'd let you come up with a dry hole. That's—you know, I mean, Mr. Fairchild likes to, I guess, egotistically say, see, I told you that was a good deal, wasn't it? You know, that type thing; Mr. Fairchild just didn't go out and solicit people to come in. I mean, he wasn't a promoter.

Mr. KEITH. Did you tell Judge Nixon that given what you knew about Wiley and his reputation that he would not lose money in an investment with Mr. Fairchild?

Mr. HOLMES. I'd say that would be my opinion. I'd say it would be an excellent opportunity and I advised him to do it. I said, yes, I think it would be very safe. I think there would be a strong probability that it would be a good investment.

Mr. KEITH. Did Judge Nixon give you any details about the type of investment or what he was planning to do with Mr. Fairchild?

Mr. HOLMES. No, I don't recall it. As a matter of fact, I know because so much of the darned stuff came out during all that mess that went on down there. You know, it was the first time I'd heard about it. I didn't know any of the details.

Mr. KEITH. Let me turn your attention now to the Drew Fairchild drug case.

Mr. HOLMES. All right, sir.

Mr. KEITH. Can you tell us a little bit about how drug cases are handled down in Mississippi, who has responsibility, and what the various agencies are?

Mr. HOLMES. All right, sir. On the State level, you'd have—any law enforcement officer has a right to handle any violation of any crime, whether it be a constable, deputy sheriff, police officer, whoever.

We have a special bureau called the Mississippi Bureau of Narcotics.

On the Federal level, you have the Drug Enforcement Agency, as well as you have other agencies such as the Customs agencies that inter-work with the Drug Enforcement Agency. And then you have various task forces that are supposed to coordinate between State and local level, you know, officers.

Mr. KEITH. Is this a situation of concurrent jurisdiction in that both Federal authorities and State authorities have the right to prosecute?

Mr. HOLMES. Yes, sir, that's right. In other words, I cannot—if a person made a crime and he violated the State law and he violated the Federal law—and as a matter of courtesy and cooperation, we generally and would always check with the Federal and if the Federal asked us to do them a favor, then we'd do it, and vice versa. But we would always extend professional courtesy, but there was no legal, binding effect of one prosecuting as compared to another prosecuting.

Mr. KEITH. Now, in the summer of 1980 Drew Fairchild was the manager of the Hattiesburg Airport, isn't that right?

Mr. HOLMES. That's correct.

Mr. KEITH. And do you know generally what his job was there?

Mr. HOLMES. No, sir. I never was out there when he was out there. I have no idea.

Mr. KEITH. Did there come a time when you became aware that either the airport was under investigation or that there had been a drug bust at the airport?

Mr. HOLMES. Yes, sir. I talked with—as I would just from time to time, I talked with some Mississippi Bureau of Narcotics people about the fact that I'd been hearing stories about airplanes landing and taking off in the middle of the night.

And there was one particular fellow out there by the name of Dysit that had been convicted several times of other crimes, I believe, breaking in, and so forth. But, allegedly, what I'd heard was that he was supposed to have been gassing airplanes at two or three o'clock in the morning.

I remember talking to the, you know, Bureau about that, and they told me they had the thing under surveillance and was watching it.

Mr. KEITH. And at this point in time you were local district attorney.

Mr. HOLMES. Yes, sir.

Mr. KEITH. And that was why you were dealing with the Bureau of Narcotics?

Mr. HOLMES. That's right. They're in the office right across the street and they would come in and out of the office on cases.

Mr. KEITH. Now, did there come a time when, in fact, a drug bust was made at the airport?

Mr. HOLMES. Yes, sir. The Federal Customs, I believe it was, made it. The first I heard about it, I saw it on the news or read about it in the newspaper.

Mr. KEITH. And this was a bust involving a plane load of marijuana?

Mr. HOLMES. It was—yes, sir. I believe it was a small—they had followed a plane, I believe, into Hattiesburg and when it got into Hattiesburg they made the arrest.

Mr. KEITH. And who was initially handling the case? Was that a State case or a Federal case?

Mr. HOLMES. It was a Federal case. They made the arrest and I never saw a report or anything on it. You know, I was told that the Customs or the Fed was handling it and I said, sure, fine, and that was——

Mr. KEITH. Did you ultimately come to learn that the Federal authorities indicted three of the drug smugglers?

Mr. HOLMES. It was some time later. I doubt seriously if I followed it that closely, to be honest, at the time.

Mr. KEITH. Do you know whether Drew Fairchild was implicated in that drug conspiracy?

Mr. HOLMES. Yes, sir, later on I learned he was.

Mr. KEITH. And what, to your understanding, was Drew's role in that?

Mr. HOLMES. It was my understanding that Drew gave a statement. I mean, I remember reading the statement he'd given the Federal—after he had agreed to cooperate with them, he had given them a statement, something to the effect that he agreed basically just to be away from the airport when an airplane was coming in, and that he had located a house somewhere where they could store some marijuana. Those were the two areas that he was supposed to have been involved with.

Mr. KEITH. Was Drew supposed to be paid for his involvement?

Mr. HOLMES. It's my understanding he was to get $25,000, I believe was what he said in his statement.

Mr. KEITH. Now, did there come a time when either Drew Fairchild or Bill Porter or both of those gentlemen approached you about Drew's involvement in the drug case?

Mr. HOLMES. The first that I knew of Drew's involvement or anything was Bill Porter came to my office. Now, if Drew was with him or not, I do not know, you know. I assume he was; he said he was. I don't remember.

Like I explained, we handled 12 to 1,500 cases a year, you know, and the people come in and out and everything. But Bill approached me and said that he had gotten word that they wanted Drew Fairchild; you know, they were going to implicate him in the drug case.

Evidently, some of the people that the Federal had picked up had implicated and brought Drew into the case. And Bill asked me what he would do, and I said, well, I think the simple thing to do and the smart thing would be to do that if Drew has done it is to merely go to Jackson, get with the Federal people, and see if he can plead guilty, cooperate, pay a fine, and maybe get probation, I mean because in that day that's what they would generally do on a first offense if it was—I said that's what I'd do. I'd go up and just see what's the best deal I could cut with them.

Mr. KEITH. So at this point——

Mr. HOLMES. Of course, it would be based on what his involvement was, you know, whatever they would recommend.

Mr. KEITH. So at this point in time, you weren't handling the case?

Mr. HOLMES. No, sir.

Mr. KEITH. And you sent them up to George Phillips, the U.S. attorney in Jackson?

Mr. HOLMES. I called George Phillips from my office, told him that—I say I did; I think I called George and told him to set up an appointment for Bill to take Drew up there.

Mr. KEITH. What was your next involvement in Drew's drug case?

Mr. HOLMES. Subsequently, there was another case or two; there was another airplane that came in from—on its way up to Kentucky that had a load of bad fuel in it, apparently, where they had fueled up, and they were flying over Hattiesburg and they ran into a lot of thunderstorms, and so forth. So he was forced to land in Hattiesburg, but he was coming on his way up to Kentucky.

And the same people made the arrest there, and so I was planning on—not on presenting this case, but at the same time I was going to present facts to the grand jury as to what had taken place in the earlier drug bust out there and—

Mr. KEITH. Can you tell us what you mean by presenting a case to the grand jury?

Mr. HOLMES. OK. A lot of times, you go in and you want to tell them here's what crimes have been committed; I want to bring you people—because you people are the conscience of the community, you know, and you should know, you know, what's going on within law enforcement regarding these various things.

There was an earlier drug bust, but the Federal people have handled the case, you know, and here's what it is, and give you the facts on that and just go down other cases; I mean, not just these cases. There were other instances there where there had been drug busts.

I was planning on presenting that case to the grand jury just as an education or anything else. Bill was in and out of the office all the time.

Mr. KEITH. This was Bill Porter?

Mr. HOLMES. Bill Porter, and I mentioned it to Bill and I asked Bill whatever happened. He said he didn't know; that, you know, he turned it over to the Federal people and that nothing that he knows of, you know, ever happened on the thing; that Drew was around town. He just doesn't know.

He said as a matter of fact, Drew never even paid me. He said I went up there and I cut a deal for him and I never even got a quarter out of it. I said I'll be darned. I said, you mean you can't get paid and you did all that?

Mr. KEITH. Did you come to learn that Drew had entered into an agreement with the Federal authorities to cooperate?

Mr. HOLMES. Yes. I called George and told him—I'm sure I picked at him about Porter's in here and goes up there, and poor Porter. I mean, we're all just very, very close friends down there in a little, small area, and everybody knew everybody.

And George told me, he said, well, you know, he says, he came up here; he was supposed to cooperate, he's supposed to have made a bunch of cases down in—I want to say down in Florida where he knew a lot of the people down there. Maybe that's where this thing originated from and came into Hattiesburg, but he has not done what he said he'd do, and as far as I'm concerned, you can indict him and do whatever you want to do to him. I said OK.

Mr. KEITH. Did Mr. Phillips outline for you what his agreement with Drew was in terms of what the terms of the deal were?

Mr. HOLMES. I believe that Bill had a—I don't whether George did or Bill showed me a copy of what their agreement was.

Mr. KEITH. And do you recall that Drew had agreed with the Federal authorities to plead guilty to a drug felony and to pay a $15,000 fine in return for cooperating?

Mr. HOLMES. If that's what the plea bargain, as I recall, said, yes.

Mr. KEITH. And that he would not spend time in jail, but would serve five years' probation?

Mr. HOLMES. That's correct.

Mr. KEITH. So what did you do once you learned this information from George Phillips?

Mr. HOLMES. I turned it over to Katie Matison and told Katie that we—you know, what the situation was. I'm going to work it up to present to the grand jury.

Mr. KEITH. So you made the decision after talking with Mr. Phillips and learning that Drew had not cooperated with the Federal authorities——

Mr. HOLMES. That's right.

Mr. KEITH. You made the decision to indict him through the State grand jury?

Mr. HOLMES. That's right, that, and also the pilot of the airplane had never been indicted by the Government. The rest of the people involved in it had already been indicted and pled guilty and had been sentenced, it was my understanding.

But there were two outstanding criminals in the group that had not been sentenced. One was Drew and one was Watkins, the pilot, and so George said, why don't you go ahead and handle those? I said OK.

Mr. KEITH. Did you decide to indict Drew Fairchild because you wanted to help Bill Porter collect his legal fee?

Mr. HOLMES. No, sir, that wasn't it. That brought it to my attention, I guess. It made a big issue of the thing, but, no, sir; I was going to present it. I would have indicted him whether he had paid Bill or not.

Mr. KEITH. Did you take the case with any intention to bestow favorable or unfavorable treatment on Drew Fairchild?

Mr. HOLMES. No, sir.

Mr. KEITH. Did you have an ax to grind either for him or against him?

Mr. HOLMES. No, no, sir; no, sir. To the contrary, I mean, you know, Mr. Fairchild had always been such a big supporter around there. I kind of regretted kind of having to do it, you know, on account of his father, but then I'd always understood that he and his father were totally separated and I—but, you know, no, sir.

Mr. KEITH. Can you tell us how the case was presented in the grand jury?

Mr. HOLMES. Yes, sir.

Mr. KEITH. In other words, what evidence was presented against Drew Fairchild?

Mr. HOLMES. My assistant, Katie Matison, worked it up, issued subpoenas, and I remember the night before the presentation I got a call from Katie Matison—she was very upset—saying that Mr. Dickey with the Mississippi Bureau of Narcotics said he wasn't coming to the grand jury; that they had already—that the Bureau of Narcotics had already made arrangements with the Federal Government and they were personally handling it and they had made an agreement with the Government not to proceed on it.

And Katie called me up saying that he was not coming. So I called him and told him, I said, Captain, it's my understanding you're refusing to honor the subpoena of the grand jury. And he said, that's right; we've already made an agreement with the Government.

Well, I knew better because George Phillips had told me, you know, to go ahead and, of course, I guess he did not have privy, you know, to that. And I said, well, Captain, I said, apparently the people in the Mississippi Bureau of Narcotics—you all now have the authority just to ignore lawful orders of the grand jury, is that correct?

And he said, well, I've been told by Captain Dial, or Mr. Dial, not to come. And I said, well, in the morning at nine o'clock when the grand jury convenes, I'm going to call you and you can come and explain to the grand jury, the foreman of the grand jury, why you're not there, or do whatever you want to do. But in the morning, you know, when the grand jury convenes, something is going to be done. You know, you just do what you want to.

So the next morning I got there and he was there and he was very apologetic, said that they had found out that these people had not cooperated and the Government, you know, that was fine to go ahead, you know, and proceed, and I said fine.

He came in—he and I want to say Mike Tyson came in and presented their evidence that they had to the grand jury, and that was it.

Mr. KEITH. And after that—and that would be in about August of 1981—the grand jury voted and returned an indictment?

Mr. HOLMES. Returned an indictment, yes, sir, a true bill on Drew Fairchild and Mr. Watkins.

Mr. KEITH. And they were indicted jointly as joint co-conspirators?

Mr. HOLMES. Yes, sir, right.

Mr. KEITH. Now, after Drew was indicted, did you talk with Wiley Fairchild at all?

Mr. HOLMES. No, sir.

Mr. KEITH. Did you ever call Wiley Fairchild on the phone and tell him that he ought to get Bill Porter to represent his son, Drew?

Mr. HOLMES. Never, no, sir.

Mr. KEITH. Who was handling the day-to-day responsibilities in the Drew Fairchild case after the indictment?

Mr. HOLMES. Katie Matison.

Mr. KEITH. And she would be one of your assistants?

Mr. HOLMES. One of my assistants, yes, sir.

Mr. KEITH. Were you making the important decisions in the case in terms of plea discussions?

Mr. HOLMES. Always. Every case in the district attorney's office was my responsibility, every one. Now, as far as the day-to-day decisionmaking, they had authority to make agreements and things like that without coming—I mean, sometimes they'd make some I wish they hadn't made, but I'd always back them up on it.

Mr. KEITH. Did Drew Fairchild initially plead not guilty to the charges?

Mr. HOLMES. Yes, sir.

Mr. KEITH. And then did there come a time approximately five months after indictment in January of 1982 when you reached a plea agreement with Drew?

Mr. HOLMES. That's right.

Mr. KEITH. Can you tell us how that plea agreement was reached?

Mr. HOLMES. Yes, sir. I was informed somewhere around Christmas or in December that Texas had been holding Watkins and that the Bureau of Narcotics had had that knowledge that they had him out there, but they were getting ready to release him; that they had a rule out there that if you didn't have someone to verify or sign an affidavit identifying the person they'd picked up on a fugitive warrant—it was my understanding they picked him up on some traffic count and when they brought the fellow in, they put it in what they call the NCIC, the National Crime Investigative—it was located here in Washington, I understand, and it comes out under what they call a hit.

And it comes out and identifies this man that was wanted, you know, in Mississippi, and so it came out that this man was wanted and so they held him.

Mr. KEITH. And this was Robert Watkins, the pilot of the drug plane?

Mr. HOLMES. This is Mr. Watkins, yes, sir. And so they have a law, it's my understanding, in Texas that after "x" number of days—I want to say like 30 days—if they don't have absolute verification that the person they're holding is one and the same as what's in the NCIC, then they turn him loose.

And it's my understanding we were down to the wire; we only had two or three days to get some identification on him. You know, this was brought to my attention, and they wanted to know—it seems like our sheriff's department asked did we have anybody who could verify this was Watkins.

And so I asked Katie about it and, as I recall, she had tried to maybe get some type of verification through the Government, but the Government was using these other people as undercover somewhere and she hadn't been able to get that cooperation.

And I would think it was probably me; I probably said, well, maybe I can get Porter to get Drew to make the identification on him. So I called Bill Porter up, and I guess you want to call it artfully or skillfully negotiation. I called Mr. Porter up and told him, I said, Bill, we got Watkins in Texas.

Now, we're getting ready to make a deal with one of these boys, either Watkins or with your client, and he's ready to come in and put the whole thing on your client. However, if your client wants to come in and cooperate, I'll be willing to make you the same deal that the Government made you, you know, but we need—I need an answer right now.

And he called and came back and said, yes, Drew would be willing to identify him if that is truthfully one and the same person.

Mr. KEITH. When you say——

Mr. HOLMES. And he come in—pardon?

Mr. KEITH. Go ahead, sir.

Mr. HOLMES. So my secretary prepared an affidavit, along with the picture; I'm sure they telefaxed his picture from Texas over, and he took it out there to Drew. Drew was out at his home, as I recall, with some type of back trouble or eye trouble or some health problem and couldn't come downtown.

So they went out there and he identified him, signed the affidavit; based on the strength of that affidavit, wired back to Texas and, sure enough, they held him.

Mr. KEITH. When you say you artfully negotiated with Bill Porter, in fact, you had not reached any sort of agreement with Watkins. You were simply——

Mr. HOLMES. None whatsoever.

Mr. KEITH. —telling him that to force Drew's cooperation?

Mr. HOLMES. That's right. I did not want to let him know the urgency of why I needed this cooperation.

Mr. KEITH. And as a result of that negotiation, did you reach a plea agreement with Drew Fairchild?

Mr. HOLMES. Yes, sir.

Mr. KEITH. And what were the terms of that?

Mr. HOLMES. That he would testify against Watkins totally, in turn for the same agreement that he had with the Federal Government——

Mr. KEITH. So in other words——

Mr. **Holmes**. —except that in Mississippi the maximum fine for what he was charged with was $5,000. It's much higher now; we've raised it since then, but at that time it wasn't but $5,000. The Federal Government had a $15,000 fine and from the State court it was a $5,000 fine.

Mr. **Keith**. So under the terms of your arrangement with Drew Fairchild at that time, he would not go to jail, but would only serve five years' probation and pay a fine of $5,000 in return for cooperating?

Mr. **Holmes**. That's correct, that's correct.

Mr. **Keith**. Now, was this a written plea agreement?

Mr. **Holmes**. No, sir.

Mr. **Keith**. Why not, sir?

Mr. **Holmes**. I've never had a written plea agreement in my life.

Mr. **Keith**. That wasn't the practice in the district attorney's office?

Mr. **Holmes**. No, sir; no, sir.

Mr. **Keith**. Was it a binding plea agreement in the sense that your recommendation that Drew Fairchild not go to jail—was that binding on the judge?

Mr. **Holmes**. No, sir, not on the court.

Mr. **Keith**. So the court was free to sentence Drew to something else if the judge saw fit?

Mr. **Holmes**. They could have given him the maximum. They could have given five years and $5,000 in the Mississippi Penitentiary.

Mr. **Edwards**. There is a vote in the chamber of the House and we will recess now until one o'clock.

Mr. **Keith**. Thank you, Mr. Chairman.

[Whereupon, at 11:58 a.m., a luncheon recess was taken.]

AFTERNOON SESSION

Mr. **Edwards**. The subcommittee will again come to order.

Mr. Keith, would you proceed, please?

Mr. **Keith**. Thank you, Mr. Chairman.

Mr. Holmes, before we broke for the recess, you were telling us a little bit about the plea agreement that you ultimately reached in the State case against Drew Fairchild, and I believe I'd asked you whether or not that was a written plea agreement?

Mr. **Holmes**. It was not.

Mr. **Keith**. And why was that, sir?

Mr. **Holmes**. We just didn't have written plea agreements; handled about 1,500 cases a year down there and you work out 99 percent of them. And you got two assistants and one secretary and you just don't—just the volume itself would preclude all of the——

Mr. **Keith**. And the terms of the plea agreement with Drew Fairchild were what?

Mr. **Holmes**. It was that he would cooperate, which he did, by signing and identifying Watkins; that he would then subsequently testify in court about Watkins' involvement in the dope deal, and that as soon as the trial was over that he then would be sentenced.

But prior to that time, he would change his plea from not guilty to guilty, at which time he would then become a convicted felon.

Mr. **Keith**. And I believe you——

Mr. **Holmes**. He would then pay the maximum fine of $5,000.

Mr. KEITH. And I believed you testified earlier that the agreement called for you to recommend a sentence of five years' probation and a fine——

Mr. HOLMES. That's correct.

Mr. KEITH. —but that there was no certainty about that.

Mr. HOLMES. No certainty. I mean, it's strictly up to the judge. The judge could do—as a practical rule, the court will generally go along with the recommendation of the State.

Mr. KEITH. Now, you indicated that one of the reasons why you reached this agreement was to be able to extradite Watkins, the pilot.

Mr. HOLMES. That was the primary reason, yes.

Mr. KEITH. What about the terms of the deal? Did you believe those were fair terms?

Mr. HOLMES. Well, the Government had offered it to him. He was a first offender on the periphery. The man was in bad physical shape. I believe he was having a lot of eye trouble, needing back surgery down in there.

I mean, it's—if he hadn't been Wiley Fairchild's son, nobody would have thought a thing about it, a first offender on the periphery, maximum cooperation. I mean, nobody would have thought anything about it.

Mr. KEITH. In deciding what the appropriate terms of the disposition were to be, did you take into account that he was Wiley Fairchild's son? Did that have anything to do with it?

Mr. HOLMES. Not at that time, no. I mean, I hadn't received any vibes one way or another. Wiley could care less about what went on in the case.

Mr. KEITH. And after you reached the plea agreement, I gather you testified earlier that Drew did, in fact, cooperate in signing the affidavit?

Mr. HOLMES. Yes, right. That's evident by his signed affidavit.

Mr. KEITH. Did Watkins then come to trial, or what happened?

Mr. HOLMES. No, sir. Watkins—they brought him in. They held him in Texas, and Texas has some type of a procedure out there where they automatically let them loose on a $5,000 personal recognizance bond, I guess, because they have so many people out there in the jail system.

Whatever it was, we weren't able to pick him up. Subsequently, he did surface again down in Florida, though.

Mr. KEITH. But at least at this point in time in early 1982, Watkins had jumped bail and was not available to be tried?

Mr. HOLMES. Right, that's correct. I assume that he pled guilty, that he would be over in State court like the following week. Generally, you know, you send a sheriff's deputy out to pick him up and bring him in. You know, they call them and just normal process on it, bring him in.

We'd bring him in; we already had him indicted. We would go and arraign him and have a trial. The likelihood, with the type of evidence we had, he probably would have pled guilty. At that time, we would have finished the sentence on Drew and the case would have been over with and have been history.

Mr. KEITH. Why did you decide to continue Drew's sentence until after Watkins' trial?

Mr. HOLMES. Well, because I'd had a case on the Gulf coast where I brought a man in all the way from California who was an eyewitness to a horrible murder and he had given sworn testimony, sworn affidavits, as to what the facts were, and then when we got in the trial he totally backed up on us and then I had a very hard time fighting with him, and I says I never will sentence anybody again until after they get through testifying.

Mr. KEITH. You viewed the fact that Drew was not going to be sentenced until after he testified——

Mr. HOLMES. That's right.

Mr. KEITH. —against Watkins as leverage to ensure that he would tell the truth?

Mr. HOLMES. That's correct, which I thought would be next month. I mean, if things had gone like it should have gone, Drew would have been sentenced next month, the case would have been over with; it would have been history.

Mr. KEITH. Now, did there come a time when Watkins surfaced again and was apprehended, I believe you said in Florida?

Mr. HOLMES. Down in Florida, yes, sir.

Mr. KEITH. And approximately when was that, if you recall?

Mr. HOLMES. I don't recall. I'm going to say it would have to be probably in the spring; I want to say sometime in probably like 1983, maybe, probably about 1983.

Mr. KEITH. Well, let me ask you this. Was Watkins apprehended before Drew's case was passed to the files?

Mr. HOLMES. Let me see. Was he apprehended? Yes, sir—no, no, no. He was apprehended—I believe they were in the process of extradition at the time he was passed to file, I believe is correct.

Mr. KEITH. And then there came a time in December of 1982 when Drew's case was passed to the file?

Mr. HOLMES. Yes, sir, right.

Mr. KEITH. And that was by a written order?

Mr. HOLMES. Right, right, a motion and an order of the court.

Mr. KEITH. Who prepared those documents?

Mr. HOLMES. Glenn White, who was my assistant district attorney.

Mr. KEITH. And did he do that at your instructions?

Mr. HOLMES. At my instruction.

Mr. KEITH. And it was your decision to pass the case to the files?

Mr. HOLMES. My decision to recommend it to the court, which the court went along with.

Mr. KEITH. Now, when did the idea of passing Drew's case to the files first occur to you?

Mr. HOLMES. Well, the first time it was mentioned was when I was with Judge Nixon and the case was brought to my attention and I, you know, well, what do you want me to do with the thing, or words to that effect. What did Wiley want?

Mr. KEITH. OK. Why don't we take——

Mr. HOLMES. I said, hell, I'll pass it to the file; no problem with me.

Mr. KEITH. OK. Why don't we go through the details of your dialogue with Judge Nixon——

Mr. HOLMES. OK.

Mr. KEITH. —about Drew's case?

Mr. HOLMES. All right.

Mr. KEITH. Why don't you tell us, with your best recollection today, exactly what the conversation was between you and Judge Nixon, how you came to be together, and what occurred?

Mr. HOLMES. OK. Judge Nixon was in town. He came by my office and he was going to pick up some turkeys. We had killed, or he killed some turkeys up at Vicksburg and they were right there at my farm, and he came by there for the purpose of going out to get the turkeys to take home with him. There were two of them.

Mr. KEITH. You and he had been hunting together in Vicksburg?

Mr. HOLMES. Well, that had been some—yes, sir, some month or so before that. I had been up there. I didn't do any of the hunting. He had done—he was a tremendous turkey hunter.

Mr. KEITH. OK.

Mr. HOLMES. But he had to go on to other business, whether he had to go to court in Jackson or Meridian or wherever. Anyway, he had to leave and he asked me as a courtesy would I bring them home, put them in my deep freeze, and he'd stop by and pick them up in the future.

Mr. KEITH. OK.

Mr. HOLMES. And that was the purpose for going out to the farm to pick up the turkeys.

Mr. KEITH. Now, did he meet you out at the farm or——

Mr. HOLMES. No, sir. He came by the district attorney's office on Friday afternoon and, as we would customarily do, Friday afternoon when everybody gets ready to shut down, different people would come in and sit around and sometimes we'd go have a drink or two there in the office with the sheriff's people or whoever.

Mr. KEITH. Did Judge Nixon come by himself or was he with someone?

Mr. HOLMES. I remember him coming by. The logs show that Carroll Ingram came, you know, with him, so I am wanting to say that Carroll Ingram came by there with him.

Mr. KEITH. By log, you're referring to a log that——

Mr. HOLMES. My secretary—I didn't know she was keeping one. Later on during all the investigation, I found out that she kept a log of every—you know, people that came in and out, and on the particular day there was an indication that he and Carroll were both in there.

Now, there's no notation saying they came together or anything like that, but both names appeared so I just assumed they came together.

Mr. KEITH. Do you have any recollection of Mr. Ingram being there that day?

Mr. HOLMES. I want to say yes, sir, he came by there.

Mr. KEITH. Do you know whether Judge Nixon drove himself to the district attorney's office or whether Mr. Ingram was driving?

Mr. HOLMES. I drove him back to his car later on that night, so I'll assume he had parked it there. I want to say—I don't even know where it was. I read my grand jury—I mean my testimony yesterday and I said I brought him back to the complex where his car was kept.

You know, I was thinking it was probably over at the Federal court, which wasn't about 300 yards different. So it had to be in that immediate vicinity, anyway.

Mr. Keith. How far is the district attorney's office from Wiley Fairchild's office?

Mr. Holmes. About three miles.

Mr. Keith. And how far would it be from Bennett York, the dentist's, office in Hattiesburg?

Mr. Holmes. About the same distance, I'd say.

Mr. Keith. Whereas the Federal court and the State court there in Hattiesburg are——

Mr. Holmes. Just right across the street from each other, basically; about 200 yards apart.

Mr. Keith. Now, you indicated that you shut up the office and had a few drinks?

Mr. Holmes. Well, I didn't physically close it, but it's customary on Friday afternoon if there was somebody around socializing, that's what we were doing, socializing.

Mr. Keith. Do you recall that there were others in the office on that day?

Mr. Holmes. Yes. Fred Cook, I remember, was up there that day. He was a football player from Pascagoula; Fred came by.

Mr. Keith. Did Mr. Ingram stay to have a drink with you?

Mr. Holmes. Carroll was not a drinker. It seemed like he'd take a little white wine occasionally, but he was a very devout southern Baptist and they frown on that, so——

Mr. Keith. You don't recall him drinking with you that afternoon?

Mr. Holmes. No, sir. He possibly could have had some white wine, but just to be sociable. You know, he might would have.

Mr. Keith. OK. Why don't you tell us, then, what happened after you were socializing there?

Mr. Holmes. Stayed there and then had a lounge or whatever you want to call it, restaurant, named Bonnie and Clyde's and everybody said, well, let's go out there and have a drink, and the judge said, well, he needed to run and get his turkeys.

And I said, well, come on, I'll run you out there to the farm and we'll come back by and meet you all out at Bonnie and Clyde's, and everybody said fine. Everybody was just very—you know, Friday afternoon; they're glad to get out of there. So everybody left going to Bonnie and Clyde's. The judge was going to ride with me out to the farm.

And on the way out to the farm he told me that he had talked to Wiley and that Wiley was concerned about his son, and the judge was very emphatic. He said, I'm not asking you anything about it; I'm not asking you to do anything; I don't want you to do anything about it. I've never asked you to do anything against your oath of office; you never asked me to do anything against my oath of office.

I mean, we went through that, you know, scenario because I was wanting kind of—but anyway——

Mr. Keith. Let me stop you there.

Mr. Holmes. All right.

Mr. Keith. You are driving out to the farm with Judge Nixon?

Mr. Holmes. To pick up the turkeys, right.

Mr. **Keith**. And how far a drive is that, sir?

Mr. **Holmes**. Oh, it's about eight to ten miles.

Mr. **Keith**. Whose car were you driving, sir?

Mr. **Holmes**. Mine.

Mr. **Keith**. And you were driving and Judge Nixon was a passenger in the front seat?

Mr. **Holmes**. That's correct.

Mr. **Keith**. Do you remember where on the drive you were when Judge Nixon first began to talk about this matter?

Mr. **Holmes**. It would be strictly speculative. I'd say about halfway out there. I mean, it wasn't any——

Mr. **Keith**. OK. During that conversation, did Judge Nixon mention whether or not he was considering more investments with Mr. Fairchild?

Mr. **Holmes**. I don't remember whether at that particular time, but, you know, I know that it came up that somewhere—I don't know whether it was on that particular occasion or not, but I do know that the judge told me that he was very happy or it was very good or they was really working out good, and I probably asked him, you know, how are you doing with Wiley or your oil wells, or whatever, and your investments. How are they working out?

And as I recall, he said, well, he was pleased with them and planned to do some more with him.

Mr. **Keith**. OK, and then you told us that Judge Nixon asked you—or that Wiley Fairchild had asked him if you and the judge weren't good friends?

Mr. **Holmes**. The words were, as I recall, he said Wiley asked me if you and I weren't good friends and I told him yes, we were, and he said would you mind putting in a good word with him for my boy.

And I asked the judge, I said, do what? He said I'm not asking you anything; I don't want you to do anything. I'm not asking you to do anything. I'm just merely repeating what Wiley said to me. And I said, hell, I said, what does he want, an apology, and I said that jokingly because that would be normally what I'd always tell everybody when they'd come in plea-bargaining or—just a very normal response of mine. I'd say what do you want the State to do, apologize to the murderer?

Mr. **Keith**. Did you tell Judge Nixon during the drive what the terms of the plea agreement were?

Mr. **Holmes**. I told him, I said, what does he want? I says he's getting—he's not going to jail; he's going to get probation. And as I recall, he said does Wiley know that, and I said I don't know; I've never talked to him. He said do you mind if I tell him? I said no. You can tell him; I don't care.

Mr. **Keith**. Now, when you say that you said what does the man want, an apology, what exactly did you mean by that? Did you mean that——

Mr. **Holmes**. I meant by that here was a man charged with a drug bust who could be looking at five years, but yet he was getting off on probation, and you say what else do you want. I mean, you know, this deal had already been cut a year earlier.

Mr. **Keith**. What you meant by that was that at least from your perspective, this was a fair arrangement for Drew?

Mr. **Holmes**. Yes. I thought the man had a real good offer. I mean, I thought I was being very lenient. I thought he was coming out smelling like a rose. I mean, I don't know—I mean, what do they want, an apology? But it wasn't a—that was just a terminology that I would use. People asked me all the time, you know, for that and I'd always—they would be kind of a stock answer. I mean, what do you want the State to do, apologize to the man because we arrested him?

Mr. **Keith**. And after that, did Judge Nixon persist in asking——

Mr. **Holmes**. No, no. It was dropped. It wasn't—I mean, the judge didn't—the judge did not persist; he did not overtly try to get into the—as a matter of fact, he was very overtly trying to stay away from the facts in the case. I never discussed the facts of the case with him at all.

Mr. **Keith**. Well, let's talk about exactly what facts of the case you did discuss with him.

Mr. **Holmes**. OK. I mean, talking about the plea bargain or the history of the case or who or what or anything like that, I mean I never discussed with him if it had been in Federal or, you know, whatever like that.

Mr. **Keith**. In terms of the facts that you did tell the judge, you did tell him the details of the plea agreement?

Mr. **Holmes**. Well, when you say details, I told him that he was getting probation and a fine and wasn't going to jail.

Mr. **Keith**. Now, you testified at trial that when Judge Nixon presented you with this that you—you testified that you felt rich and good looking——

Mr. **Holmes**. I did. I—that's right.

Mr. **Keith**. —and you decided that you would pass the case to the files.

Mr. **Holmes**. That's right. I mean, the judge—I was being totally, you know, just—I guess I was wanting to do him a favor, although he wasn't asking for me to do him a favor. You know, the very fact he asked me to do it, I guess it flattered my ego in the fact that I had the power to do it, so I said, look, judge, I'll be glad to pass the file. He says, no, I'm not asking you to do anything.

But I did tell him—like I said, I'd had a couple of drinks and I was rich and good looking and I had the authority to do it and he had asked me, you know, but that was the substance of our conversation.

Mr. **Keith**. And when you made the decision at that point in time to pass the case to the files, that was better treatment for Drew Fairchild than what had been previously arranged under the plea agreement, wasn't it?

Mr. **Holmes**. That would have been tantamount to, I guess, a dismissal, although there would have been no physical dismissal because it would always be subject to being reopened.

Mr. **Keith**. But at the time, was it your intention to reopen the case after you made that statement to Judge Nixon?

Mr. **Holmes**. At the time, it was such a lightly discussed thing. I mean, it never was an in-depth talk about you do this, you do this, and I'll do that. I wasn't none of that. It was just that it was basically on my own volition, you know, what I said I would do.

You know, I said, hell, if you want me to, I'll be glad to pass the file. I mean, whatever Wiley—I mean, nobody said anything to me about what you want, and he was very emphatic, saying he didn't want me to do anything; he wasn't asking me to do anything.

Mr. **Keith**. At that time when you were deciding to exercise your prosecutorial discretion——

Mr. **Holmes**. That's right.

Mr. **Keith**. —in terms of passing it to the files——

Mr. **Holmes**. That's right.

Mr. **Keith**. —was it your intention that the case would simply go away; that you would sweep it under the rug as opposed to ultimately sentence Drew Fairchild?

Mr. **Holmes**. I doubt seriously if I had any type thought process at that time about it; you know, just that, well, I'll be glad to do even better than what I've already done if it'll make you look like a hero. I was wanting to make him look like a hero.

Mr. **Keith**. Now, did Judge Nixon in that conversation ever say that Wiley Fairchild was complaining that you were blackmailing him?

Mr. **Holmes**. I have no recollection of that ever being said to me——

Mr. **Keith**. Did Judge——

Mr. **Holmes**. —at that point. It was a good time later.

Mr. **Keith**. Did Judge Nixon ever mention the word "blackmail" or "extortion" or anything like that?

Mr. **Holmes**. No, he did not.

Mr. **Keith**. You think you would remember that if he had said it because it would be an accusation against you?

Mr. **Holmes**. I believe if he said it to me, I would have empaneled a grand jury and summoned Wiley and somebody down there in front of the grand jury to find out what it was he was saying because I believe another senator, Pittman, a State senator, made an accusation one time about that he had heard through, quote, unquote, "reliable sources," and wrote a big letter to the editor that he knew from reliable sources that $400,000 out of a drug bust ended up in all kind of hands with the county.

So I subpoenaed him before the grand jury and I demanded a peer committee investigation of it, and if somebody had told me that Wiley Fairchild was making that accusation, I promise you, I would have empaneled a grand jury and subpoenaed him down there.

Mr. **Keith**. Did Judge Nixon say at any point in time that Wiley was upset that there was unequal justice; that his son was——

Mr. **Holmes**. No.

Mr. **Keith**. —guilty and that Bob Royals was guilty and that Royals hadn't been prosecuted?

Mr. **Holmes**. No. I never heard about Bob Royals until after the Federal grand jury, and they inquired why I didn't indict him and I had to go to the law officers that presented the case and ask them why they didn't ask for an indictment on Royals, and they told me we did not have any evidence on him that we could link him to it.

And it wasn't until after Drew Fairchild testified and changed his statement that implicated Royals, but Drew had given a sworn statement and Royals wasn't implicated in it at the time we presented it.

Mr. KEITH. But in this conversation Judge Nixon made no mention of Royals?

Mr. HOLMES. I do not remember him ever, no.

Mr. KEITH. What would you have done had someone mentioned to you that Royals was involved and should be prosecuted?

Mr. HOLMES. I'd say let's bring the evidence forth and let's do it. If there's somebody out there that has committed a crime, then let's bring it forth.

Mr. KEITH. Now, after the—why don't you tell us what happens next? You have the conversation with Judge Nixon in the car?

Mr. HOLMES. I have the conversation with him in the car and——

Mr. KEITH. Then what occurs?

Mr. HOLMES. Excuse me. Pardon?

Mr. KEITH. Go ahead.

Mr. HOLMES. OK. Then we arrived at the farm and I said come in and let's have a drink, and it was a standing joke about he said, well, unless you got some Royal Salute—that goes back to Senator Eastland, who was very, very close to the judge. Senator Eastland would always drink Royal Salute and it was kind of a standing joke.

And I told him, I said, well, come on in, or don't let your mouth overload your fanny, or something; I think I might have some. And I had been given a bottle about a year earlier for a Christmas present, and we came in and, sure enough, I had some and I opened it and we had a couple drinks out there, and that's when we called Wiley.

Mr. KEITH. Now, who suggested that Wiley be called, sir?

Mr. HOLMES. My recollection, the only thing—the judge asked me, do you mind if I tell him. That's my recollection. I said no; go ahead and call him.

Mr. KEITH. Who called Wiley, you or the judge?

Mr. HOLMES. My recollection is that he called him.

Mr. KEITH. And to the best of your recollection, what was said in that phone call?

Mr. HOLMES. Said Wiley, Mr. Fairchild, whichever one it was, remember that fellow we were talking about? Well, I'm out at his farm and I got good news for you; your boy isn't going to jail, and thanked him for allowing him to—thanked him for his friendship, enjoying the relationship.

Mr. KEITH. This is Judge Nixon thanking Mr. Fairchild for his friendship?

Mr. HOLMES. Yes, thanked him, enjoyed their relationship or something to that effect.

Mr. KEITH. Did he use words to the effect that he appreciated being associated with Mr. Fairchild?

Mr. HOLMES. That's right. That was what I was——

Mr. KEITH. Did he——

Mr. HOLMES. He enjoyed his company, enjoyed knowing him, appreciated being considered a friend of his.

Mr. KEITH. Did he comment on the fact of his judicial salary and the need for additional money?

Mr. HOLMES. Comment—said that, you know, well, I appreciate having the opportunity. I need to make some investments because with the salary that I'm making and with obligations I have to put my children, the adopted children, through college, and so forth, it was very difficult on the salary that I have, and I appreciate the opportunity for outside investments.

Mr. KEITH. Did Judge Nixon tell Mr. Fairchild everything would be taken care of to his satisfaction, or words to that effect, do you recall?

Mr. HOLMES. I don't recall. He could have. I mean, my best recollection is he said something to the effect that I got good news for you; your boy ain't going to jail.

Mr. KEITH. And what happened after Judge Nixon made those remarks to Mr. Fairchild?

Mr. HOLMES. I asked him to let me speak to him.

Mr. KEITH. OK, and did you take the phone at that point?

Mr. HOLMES. I did; I took the phone.

Mr. KEITH. And what did you say to Mr. Fairchild?

Mr. HOLMES. I told him, I said, Mr. Fairchild, you know, I'm sorry, you know, this incident came up. I hope you didn't take it personal, and that I was very—I tried to give Judge Nixon credit for something that had already happened a year earlier.

You know, I told him, I said any time that—you know, the judge and I are good friends. Any time he ever asks me to do something, I'm glad to do it.

Mr. KEITH. You told Mr. Fairchild that you wanted Judge Nixon to get full credit?

Mr. HOLMES. I didn't tell him I wanted him to get full credit. I said it in a way where he would get full credit, or I intended for him to get full credit for it.

Mr. KEITH. You don't recall at trial testifying that you told Mr. Fairchild I want Judge Nixon to get full credit, using those words?

Mr. HOLMES. I don't recall it at trial, but I know that was my intention. I could have said that to him, but my recollection right now is that I said something to the effect that any time this man asks me to do something, I'm glad to do it.

But I did—my intentions were and my words were said so Judge Nixon would get credit, when truth and fact was that something had already been done. I'm not saying I didn't say that, but I just——

Mr. KEITH. I understand.

Mr. HOLMES. I really think that that was what I intended to convey.

Mr. KEITH. Now, after this conversation did you and Judge Nixon talk about the phone call at all?

Mr. HOLMES. I don't recall talking about it at that time.

Mr. KEITH. Did he seem upset or angered at all about anything that had happened?

Mr. HOLMES. No.

Mr. KEITH. Did he seem satisfied in any way?

Mr. HOLMES. I don't recall or gloating or, you know, anything like that. Like I say, by this time I guess both of us had three or four drinks and——

Mr. KEITH. Can you tell us again why you decided to pass the case to the file, why you decided to give this treatment to Drew's case?

Mr. HOLMES. OK. Later on—you mean when I physically passed it?

Mr. KEITH. Well, at this point in time. I gather from what you said that you were getting nothing out of this; it was of no benefit to you either way.

Mr. HOLMES. No benefit to me.

Mr. KEITH. Were you trying to help Judge Nixon in his relationship with Mr. Fairchild?

Mr. HOLMES. That was my thoughts at the time when he mentioned it. You know, I said, you know, this—I'd ingratiate Judge Nixon to Wiley; you know, make Judge Nixon—you know, Judge Nixon done him a favor.

Mr. KEITH. Did you have the sense that Judge Nixon was trying to ingratiate himself with Mr. Fairchild?

Mr. HOLMES. You know, it would only be normal. I mean, I guess that—I mean, that would just be a matter of opinion. I assume that he wasn't angry with me doing it. I don't guess it made him mad that I was doing it. I mean, he didn't—you know, he told me he didn't want anything, didn't know anything about it or anything like that.

After we talked to Wiley, I don't remember him mad, or I don't remember him coming back later on saying anything about it.

Mr. KEITH. So you assumed at the time, based upon the conversation, that Judge Nixon was trying to ingratiate himself with Mr. Fairchild?

Mr. HOLMES. You know, I got to think that would have been the reason he passed the message on to me about his conversation with Wiley about his boy. But then he was, like I say, overtly very, very emphatic that he didn't want me—wasn't asking me to do anything.

Mr. KEITH. And you were trying to give Judge Nixon credit?

Mr. HOLMES. I was trying to give him full credit. Like I've told you before, you know, I try to give 50 people credit in any occasion—I mean, a preacher, uncle, cousin, anybody like that would ever call, no matter what, if it was a first offense case we're doing and people come up, I try to let anybody think the school superintendent or the preacher—I try to give anybody credit. I mean, it wasn't any skin off my teeth. And to give Judge Nixon credit was—I was glad to do it.

Mr. KEITH. Let me read to you an excerpt from your trial testimony——

Mr. HOLMES. OK.

Mr. KEITH. —at page 740 that describes your recollection at that point in time of the phone call.

Mr. HOLMES. OK.

Mr. KEITH. And you testified, and I quote, "And with that, I told him, I said, let me speak to him, and I picked up the phone and I said, Mr. Fairchild, I want to let you know I hope you don't think there's anything personal about Drew and us. And he said, no, I never thought that. I'm real embarrassed about that, and so forth, and I take full blame here because Judge Nixon did not ask me to say or do this, but I told him, I said—I said I want to let you know that I want Judge Nixon to have credit for helping the boy."

Mr. HOLMES. That was my testimony and that will be my testimony now, just saying that I do know that was the intention; that was in my full mind and that was the purpose of my talking to him. Now, whether or not I physically said that, you know, I mean right now I'd have to—I know I testified to that and I have no problem with saying that was what, you know, was said.

Mr. KEITH. So, in fact, you gave Judge Nixon credit for your decision to pass the case to the files?

Mr. HOLMES. That's correct. That was my intention, to give him full credit——

Mr. KEITH. Did Judge Nixon——

Mr. HOLMES. —in Mr. Fairchild's mind, right.

Mr. KEITH. Did Judge Nixon say or do anything to correct the impression that he was responsible for your decision to pass the case to the files?

Mr. HOLMES. Not that I recall, not at that time or——

Mr. KEITH. So we understand this, Judge Nixon was saying no, no, I'm not asking you to do anything.

Mr. HOLMES. Right.

Mr. KEITH. And at the same time, based upon either that conversation or other conversations with Judge Nixon, he was telling you that there was the possibility of more investments with Mr. Fairchild?

Mr. HOLMES. No. That was the only time. That was, I guess, prior to, you know, this conversation about the investments.

Mr. KEITH. You don't think it was——

Mr. HOLMES. That was—I'd say we talked about it on the way out there, as I recall it.

Mr. KEITH. The possibility of other investments?

Mr. HOLMES. Right, that's correct, a good relationship between them and that he was satisfied with the investments that he had made, you know, and that he planned to make some more, or hoped to make some more within the future.

Mr. KEITH. Now, you've told us that overtly Judge Nixon was not asking for anything?

Mr. HOLMES. Overtly, Judge Nixon, to the contrary, did not ask for anything.

Mr. KEITH. But you're his close friend and you know his behavior, is that right, sir?

Mr. HOLMES. Well, I know his behavior and so I just assumed or took it on myself to try to, I guess, give him some brownie points with Wiley.

Mr. KEITH. Was Judge Nixon, in his own way of dealing with you, asking you for your help?

Mr. HOLMES. I'd say that if Wiley got the impression that his boy got some help, I don't think Judge Nixon would object to that.

Mr. KEITH. But the question was, was it your impression at the time that Judge Nixon was asking you for help.

Mr. HOLMES. I think my impression at the time was he was probably asking for something to ingratiate him to Wiley. I don't think he was necessarily asking me—well, I know he wasn't asking me to do something for Drew. There wasn't anything basically I could do for Drew, but——

Mr. KEITH. But Judge Nixon was asking help for himself in his relationship with Wiley Fairchild?

Mr. HOLMES. I'd say that there would have been no other reason to have mentioned it to me except that he wanted to live up to whatever he and Wiley had talked about. As I gather it, Wiley asked him to put in a good word and he was wanting to convey to me that, and he wanted to live up to whatever he had told Wiley and then he would gain whatever benefit that he would gain from it, which I assume would be appreciation.

Mr. KEITH. And you decided to go ahead and help the judge out?

Mr. HOLMES. That was my intention, right.

Mr. KEITH. And Drew's case was ultimately passed to the files in December of 1982?

Mr. HOLMES. That's correct.

Mr. KEITH. And at that time, were you trying to help Judge Nixon?

Mr. HOLMES. I was trying to live up to the agreement that I felt like that I had told Wiley, you know, on the phone, or I told Wiley about, and I'd say that I was primarily doing it just because I had made a promise or I had said I was going to pass the file.

Judge Nixon knew I was going to pass the file; Wiley, I assume, knew it.

Mr. KEITH. Had it not been——

Mr. HOLMES. And so, you know—pardon?

Mr. KEITH. Go ahead and finish your answer.

Mr. HOLMES. And so, you know, I had—it wasn't something cast in blood where I promised to do this, promised to do that. I thought that—when I saw Carroll Ingram a few days after that and he told me about Wiley was happy over the conversation that we'd had from the farm, I knew then that I had not overspoke myself, but then I subconsciously thought that what would happen, or consciously thought what would happen would be that Watkins would come on in and Drew would be sentenced and then it would just all go away and nobody—I mean, nothing would ever come of it.

Mr. KEITH. Had it not been for Judge Nixon's conversation and his involvement in communicating to you something that you thought was originally coming from Mr. Fairchild, would you have passed the case to the files in December of 1982?

Mr. HOLMES. I would not, no.

Mr. KEITH. Did Judge Nixon's involvement influence you to pass the case to the file?

Mr. HOLMES. If we hadn't had that conversation, then I would not have talked to Wiley on the phone and then I would not have passed it, no.

Mr. KEITH. And at trial you indicated that you did that because you were, quote, trying to make Judge Nixon look like a hero?

Mr. HOLMES. Trying to make him look like a hero.

Mr. KEITH. OK. Mr. Holmes, there's three black volumes in front of you and one of them is a set of exhibits provided by Judge Nixon and his counsel, and I'd ask for you to pull that book out and turn to Exhibit N-26. Do you recognize that document, sir?

Mr. HOLMES. I do.

Mr. Keith. That's a declaration that you prepared—I believe the date is—is that February of 1988, or July?

Mr. Holmes. That's right.

Mr. Keith. And that was a declaration prepared recently, is that right?

Mr. Holmes. Right. I believe it was prepared by his counsel, right.

Mr. Keith. Why don't you tell us how that declaration came to be prepared?

Mr. Holmes. I met with Judge Nixon's counsel in Gulfport, Mississippi, and we discussed, as I met with you all, from the case, and from that discussion they prepared this declaration.

Mr. Keith. And then what happened? They sent it to you in the mail?

Mr. Holmes. It came to me in the mail and, you know, to be frank, I glanced over it and signed it. I discussed it with them and told them that's not accurate.

Mr. Keith. Just so that I can read into the record, Mr. Holmes——

Mr. Holmes. OK.

Mr. Keith. —the quote is, "I was not influenced in any way in my handling of the Drew Fairchild matter by this brief exchange with Nixon. My office took no action, nor failed to take any action, with respect to the Drew Fairchild matter because of that brief exchange I had with Nixon."

Is that statement true, Mr. Holmes?

Mr. Holmes. No. That—you're getting into—like I explained, you're getting into nebulous areas. My discussion with Nixon had nothing to do with the way I'd handled the case about the plea bargaining, and so forth and so on. You know, that part would be completely accurate.

The subconscious—the fact that I'd made a promise—I felt like I'd made a promise to pass it to the file. That was the motivating thing that caused me to pass it to the file.

Mr. Keith. Well, you just told us that Judge Nixon did, in fact, influence you.

Mr. Holmes. Well, the very fact that he talked to me about it and mentioned it to me was enough influence on me to want to go out and do something to make him look like a hero.

Mr. Keith. So this paragraph three is not true with regard to——

Mr. Holmes. That's an inaccurate statement of what occurred.

Mr. Keith. That paragraph would not be true with regard to your passing the case to the files?

Mr. Holmes. That's correct, that's correct.

Mr. Keith. It would be——

Mr. Holmes. Whatever influence it had on me, it did have an influence. That would not be an accurate statement.

Mr. Keith. Can you tell us a little bit about what the phrase "passing to the files" means?

Mr. Holmes. Passing to the file is a technical meaning where you take something off the active docket and you put it over on the inactive docket.

Mr. KEITH. And when generally is that process used? When do you usually pass a case to the file?

Mr. HOLMES. The biggest part of the time is when you can't find witnesses and the case is getting stale or you have reluctant witnesses and things of that nature, and rather than keeping the thing coming up and coming, you just go ahead and pass them to the file, in case somebody wants to bring it back up, but it's not a final disposition of the case.

Mr. KEITH. To your knowledge, up until this particular case, the Drew Fairchild case, had there ever been a case in your experience where an individual had pled guilty to a crime and then the case was passed to the files?

Mr. HOLMES. No, sir. I do know there are some cases reported in the State Reporter that went all the way up to the United States Supreme Court that I mentioned to you where a person had pled guilty, waived the sentence, and five years later after they passed to the file they reopened it and sentenced him, and the Supreme Court said that was fine.

I never dreamed it would get to this point. I thought Drew would come on in and testify and the case would be disposed of and it would have been history.

Mr. KEITH. Well, let me ask you again, was it your initial feeling at the time you had the conversation with Judge Nixon and then the telephone call with Wiley Fairchild in which you indicated that you would pass the case to the files—was it your intention to sweep the case under the rug, to have it simply go away?

Mr. HOLMES. Basically, sure, that was my thoughts at that time.

Mr. KEITH. And by passing the case to the files, that would take it out of the judge's hands for purposes of sentencing?

Mr. HOLMES. They just put it off on—put it on the back burner.

Mr. KEITH. Now, let me ask you about the time or the date of the meeting at the farm with Judge Nixon, the drive out there, and the telephone call to Mr. Fairchild. At what time of day did that occur?

Mr. HOLMES. I'd say in the—probably around dark; I'd say 6:30, 7:00.

Mr. KEITH. And to your best recollection, when did that conversation occur in terms of date?

Mr. HOLMES. I'd say—the date? I believe it was on May 14th of 1982. I believe that's correct.

Mr. KEITH. And how were you able to arrive at that date for the conversation?

Mr. HOLMES. Because, well, the main way I got it was that my now wife and my secretary got into a hair-pulling contest out at Bonnie and Clyde's that night. It was the same night that Judge Nixon come out there with me because some of the same people were out there, you know, at the time the incident occurred, and we were going to Gary Turner's wedding the next morning.

And I remember my wife calling up my secretary and apologizing to her the next morning, and we proceeded from there on to Jackson to the wedding. And I went back to Gary Turner to find out the date of his wedding.

Mr. KEITH. And just directing your attention to one of the other books—these are the exhibits, for the subcommittee, Exhibit Number 15. That would be a marriage certificate, a marriage license for Mr. Turner indicating that he was married on May 15th of 1982.

Mr. **Holmes**. I haven't seen it, but if—right, that's correct.

Mr. **Keith**. And that's the individual who is your friend, Mr. Turner?

Mr. **Holmes**. That's right. He's now head of the Hard Rock Cafe Groups.

Mr. **Keith**. So this wedding was a matter of some significance to you?

Mr. **Holmes**. Yes. He was our manager up in Jackson at Studebaker's.

Mr. **Keith**. The incident that you just described, this hair-pulling incident, was that a quarrel between your wife and your secretary?

Mr. **Holmes**. It was a joking thing. A friend of mine who is a former partner of mine was there and Jimmie Pace and this other girl was sitting over there. We were just clowning around. She was sitting on my lap and they were picking at Marsha, who's now—who I'm married to now, and said I wouldn't let that happen if I were you.

And Jimmie had a ponytail and she went over to give her a yank rather than—I mean, this was her explanation, anyway, that she didn't mean—but she got a little over-carried away and Jimmie went sprawling down on the floor, boom, you know. And I jerked her up and we got out of there. The judge was gone at that time.

Mr. **Keith**. Did the judge go to Bonnie and Clyde's with you that night?

Mr. **Holmes**. Yes.

Mr. **Keith**. But he left before this particular incident?

Mr. **Holmes**. Right. I drove him back to his car.

Mr. **Keith**. Now, was the conversation with Judge Nixon before or after the case was passed to the files?

Mr. **Holmes**. Pardon?

Mr. **Keith**. Was the conversation with Judge Nixon, the drive out to the farm, the telephone call to Mr. Fairchild——

Mr. **Holmes**. It was before.

Mr. **Keith**. And why do you say that, sir?

Mr. **Holmes**. Well, I know May 15th of 1982 is the day Gary got married, and I know it happened the day prior to that.

Mr. **Keith**. And you've told us that, in fact, it was Judge Nixon's involvement that influenced you to pass the case to the files?

Mr. **Holmes**. If I had not told Wiley and if I—that I was going to do it, then I never would have done it, but I'd made a promise and I lived up to it.

Mr. **Keith**. Now, after you had the meeting with Judge Nixon, the drive to the farm, and the telephone call with Wiley, did you then get a call from Carroll Ingram?

Mr. **Holmes**. I either saw him on the street or had a conversation with him. Whether it was telephonic or personal, I don't know.

Mr. **Keith**. And what did Mr. Ingram say to you about the——

Mr. **Holmes**. Said that Wiley was happy, or on cloud nine, I believe were the words he used; that he really appreciated it.

Mr. **Keith**. Advising you that Wiley was happy because his son's case was over?

Mr. Holmes. I don't remember whether he used that words. The best I recall, he was just very happy with—about the phone call, the fact that we'd made a call. I don't recall those words saying his case was over.

Mr. Keith. And I think you told us earlier that you had a reaction to this phone call?

Mr. Holmes. Oh, yes. That was when I thought, I said, my God, I've let my mouth overload my fanny.

Mr. Keith. By that, did you mean that you had promised something that you might not be able to deliver?

Mr. Holmes. Meaning that it was going to be very difficult to—I realized then the posture the thing was in, so that was when I said, well, we'll get Watkins on in here and Drew will testify and he'll go ahead and he won't go to jail; nobody will know the difference between passing to the file or him getting probation. I mean, who's going to—what difference will it make?

Mr. Keith. Is it fair to say that the promise that you had made with your phone call to Wiley Fairchild created a problem because Drew's case was already in the court system, he had already put a guilty plea on the record, and that the only way that you could carry out the promise was to have Drew come in and withdraw the plea, and you knew that that was——

Mr. Holmes. It would be—to physically dismiss the case, that's the only way you could have done it. You'd have to go in and get him to withdraw his plea, then go back and let him plead not guilty, and then dismiss it. By the time you went through all that, it would be more headaches than you could shake a stick at.

Mr. Keith. And by headaches, you mean also publicity and controversy?

Mr. Holmes. Publicity, press, everything else, right.

Mr. Keith. Was the press following this particular case?

Mr. Holmes. Not at that time, they weren't, no.

Mr. Keith. And so what was your reaction after learning of this information from Carroll Ingram that Wiley was happy and that you now——

Mr. Holmes. It concerned me then that I had something that I did not think I could deliver, and so, you know, in the back of my mind I said, well, I'll get—you know, Watkins will be on in here. You know, I'm sure we'll catch him and bring him on in. He's under bond and I'm sure we'll get him extradited on up here. Drew can testify; the case will be over. He'll pay his fine and be on five years' probation, you know, as the plea bargain agreement called for.

Mr. Keith. So you hoped that ultimately everything would work out?

Mr. Holmes. Sure. Let me say at the time—let's see if I can explain something. At the time, you had a lot more things going on. This was just not a big, big—you know, big, huge concern, you know, around there.

You were handling about 1,500, like I say, cases a year. You were trying cases; you had everything going all the time like this. This case just was not—it just wasn't that big of a, you know, case at that time. It just was not that much of a, you know, case.

Mr. KEITH. Would it be fair to say that the only thing that made it different was that Drew Fairchild was Wiley's son and that Judge Nixon had become involved?

Mr. HOLMES. I'd say the fact that until a lot of publicity started on it, there was really, you know, no attention to it.

Mr. KEITH. Now, did there come a time when Judge Weldy left office?

Mr. HOLMES. Right. Judge Weldy was leaving office at the end of 1982.

Mr. KEITH. And you passed the case to the file to carry out your promise?

Mr. HOLMES. That's right.

Mr. KEITH. And what happened then in connection with Drew's case?

Mr. HOLMES. Well, a newspaper reporter picked up on the fact that Wiley Fairchild's son's case had been passed to the file and they came out with an editorial. And I called Wiley up and told him that I was sorry to see him blasted that way; that I thought it was very unfair; that as much as he does for the community there and, you know, as much as he does for everything, I thought he was being treated unfairly because it wasn't him that had done anything, it was his son that had; and that I had—by passing it to the file, it created, you know, this publicity, you know, problem on the thing. And he thanked me for calling, as best I recall, and——

Mr. KEITH. And thereafter, did you reinstate the case?

Mr. HOLMES. I reinstated the case, yes. I made the statement that if I could get Watkins back up there, then I would reinstate it, and I was able to get him up from Florida and I did reinstate the case, put it back on the active file.

Mr. KEITH. And that was about roughly a month after you had passed it to the files?

Mr. HOLMES. Three weeks, I believe, or four weeks.

Mr. KEITH. Was there any sentencing of Drew Fairchild at any point in time during 1983, the year after you passed it to the files?

Mr. HOLMES. There was not.

Mr. KEITH. Did there come a time at the end of that month when you were leaving office as district attorney at the end of 1983?

Mr. HOLMES. Watkins came back—let me see if I can—Watkins came back up and we had an agreement that he'd be back for trial and he was put on a $100,000 bond, and then he skipped again. And to this good day, the Federals or anybody else says they can't find him.

Mr. KEITH. So Watkins has never resurfaced?

Mr. HOLMES. Watkins is still at large, you know, and I'd asked during the trial and everything else, you know, could they give us assistance. I got a stack of letters to the FBI and everybody else trying to, you know, apprehend him and bring him in. We were making every effort, you know, to get him in, but Watkins never was apprehended even though he jumped the $100,000 bail.

Mr. KEITH. So——

Mr. HOLMES. But as I was getting ready to leave office on November 3rd, 1983, an airplane crash occurred, in which Bill Porter, myself, Nolan Hill, and Russell Fagan were in an airplane. We'd been fishing. The plane crashed and Bill Porter lost his life. Bill was Drew's attorney.

Bill had asked me on the fishing trip to go ahead and sentence Drew before I left office because he did not know if Glenn White, who had been elected, would live up to, you know, the agreement. So I told Bill I'd be glad to do it.

Glenn White then, just before I left office, had a number of cases and he asked me to dispose of them before I left, one of which was the Drew Fairchild case, because there had been a lot of publicity on it. I said I'd be glad to.

So I called Carroll Ingram, whom I thought would represent him, since Bill was dead. I called Carroll and I asked Carroll would he get hold of Drew and bring him in; I'd like to go ahead and sentence him and dispose of it, as the plea bargain had been worked out.

Carroll told me that he either didn't represent him and that he had talked to Wiley and that Wiley was upset about it, and that I needed to go see Wiley to get the thing—if I wanted to get the thing out of the way, I needed to go talk to Wiley personally.

So I called Wiley, as I recall, or Carroll might have set up the appointment. But, anyway, a meeting was set up with Wiley like at 7:00, 7:30 the next morning, and I drove out there and I thought about it. I said, well, I thought that Wiley had supported Dickey McKenzie. I said, well, I'll call Dickey, who was a newly-elected judge.

Mr. KEITH. McKenzie was the judge that was going to be handling Drew's case?

Mr. HOLMES. That's correct, and I said I'll just get him right out there with me in case Wiley has got any questions. You know, he can just ask Dickey, you know, about it.

And so I got up, rode out there the next morning, and went in. Dickey, I don't recall, said a word. I explained to Dickey—I mean explained to Wiley the situation, and I said, but I have a plea bargain and the agreement with Drew is that he would not be sentenced until after he testifies against Watkins, you know, but I'm getting ready to leave office.

I told Bill I'd go ahead and see about disposing of the case before I left office, and when I leave office there's no way I can say that my predecessor, or whatever you call the guy following me, my successor, would be bound to the agreement. But I'm willing to go ahead and live up to it even though I know there will be a lot of bad publicity on it; that I'll still go ahead and honor my word on it.

And so Wiley said, no, just leave it like it is, and I said fine, and that's what happened.

Mr. KEITH. Did Judge McKenzie indicate whether or not he was going to honor the plea agreement?

Mr. HOLMES. Never. I've never—I never asked him, he never opened his mouth, and to this good day I don't know whether he would or would not have.

Mr. KEITH. So that at the time you left the——

Mr. HOLMES. I quite honestly doubt if he would have, you know, quite honestly.

Mr. KEITH. So that at the time you left the district attorney's office at the end of 1983, you had a situation involving Drew Fairchild where you had indicted him roughly two, two-and-a-half years earlier.

Mr. HOLMES. Right.

Mr. KEITH. He had reached an oral plea agreement but had never been sentenced?

Mr. HOLMES. That's correct. He had pled—let me say this—he had pled guilty and he was a convicted felon and he was subject to the judge calling it up and giving him the max at any time.

Mr. KEITH. Now, did there come a time when you learned that there was an investigation of the handling of the Drew Fairchild case?

Mr. HOLMES. I did not know exactly what the investigation was. I guess my answer would be yes on the thing. At the time, I was—I didn't know what it was about.

Mr. KEITH. When was the first time you learned that there was an investigation of any kind?

Mr. HOLMES. I got a phone call from Judge Nixon.

Mr. KEITH. And when was that, sir?

Mr. HOLMES. I'd have to say probably April, somewhere in that general area, of 1984.

Mr. KEITH. April of 1984?

Mr. HOLMES. Right.

Mr. KEITH. And can you tell us what Judge Nixon told you in that conversation?

Mr. HOLMES. He was fit to be tied, he was highly outraged; said someone, some investigator—he didn't say where from or what department or whatever—had come by and seen him, and that someone or somehow there had been an accusation made against him about his involvement with the Drew—or with the Fairchild case. That was the first I knew about that.

And during that conversation he told me that he had told them that he had never talked to anybody at any time about the case.

Mr. KEITH. Mr. Holmes, let me read you an excerpt——

Mr. HOLMES. OK.

Mr. KEITH. —of your grand jury testimony——

Mr. HOLMES. All right.

Mr. KEITH. —on June 28th, 1985, about that conversation, page 48. Question: "The investigation," meaning this grand jury. Answer: "I don't know if the grand jury had been called at that time. He," meaning Judge Nixon, "called me on the phone and he told me that some people had come to see him and that he was just incensed that anyone would accuse him of being tied into the Drew Fairchild case."

Mr. HOLMES. That would be correct.

Mr. KEITH. "He told me he never even heard of the Drew Fairchild case."

Mr. HOLMES. That would be correct.

Mr. KEITH. "He," meaning Judge Nixon, question. Answer: "Judge Nixon. He said he never even heard of the Drew Fairchild case; that even though he had gotten some minerals from Wiley Fairchild, had absolutely nothing to do with any handling of any case." Did he say that, sir?

Mr. HOLMES. That's right.

Mr. **Keith**. "Very insistent that I've told them that I've never talked to anyone in the Government and I've never talked to you about the handling of the case."

Mr. **Holmes**. Told me that—told me he'd never talked to anyone at any time about the handling of the Drew Fairchild case.

Mr. **Keith**. And he also said that he had never talked with you about the case?

Mr. **Holmes**. That's right, anyone, any time.

Mr. **Keith**. That's right, but he's——

Mr. **Holmes**. You know, you or anybody, probably you or anybody in the Government, you know, but he was very insistent. As I recall, he repeated himself two or three times, and my—well, judge, you never talked to them, you never talked to me.

I don't think I said that to him, but that would have been—that was my feeling on the thing. OK, if you never talked to me, you never talked to me.

Mr. **Keith**. Knowing Judge Nixon as you know him as a close friend, what was he telling you in that conversation?

Mr. **Holmes**. Well, as I gather what he was saying was that people came by here and wanted to know about the involvement he had in the Drew Fairchild case and that his response to them was that he had not ever talked to anybody at any time about it, period, and that I gathered from that that was his position on the thing and that if they came to see me, then he wanted to let me know what his position was, which I assumed that he wanted me to verify that he had not talked to me about it. That was my impression. He certainly did not say don't—he didn't say tell them this, tell them that. That was just what I assumed was his position, and that it was a very common thing.

I mean, some man calls you up and says you had me out on stake-out last night, didn't you? Then you call out whether you was on a stake-out last night, wasn't I? Yes, OK, if you were with me, you were with me last night. I mean that type——

Mr. **Keith**. You knew what Judge Nixon was saying to you on the phone was not true?

Mr. **Holmes**. I felt like what he was saying, yes, I mean because——

Mr. **Keith**. Well, listen to the question, Mr. Holmes.

Mr. **Holmes**. OK.

Mr. **Keith**. You knew that what he was saying at the time was not true?

Mr. **Holmes**. I knew at the time he was saying that he had never talked to me—that it is incorrect, that he was not true; that was not true.

Mr. **Keith**. In fact, he talked with you and he had had involvement in the handling of the Drew Fairchild case, isn't that true, sir?

Mr. **Holmes**. Involvement was as I testified to.

Mr. **Keith**. Did you assume that Judge Nixon was embarrassed about his involvement in the case?

Mr. **Holmes**. I assumed the whole thing was that he just did not want any adverse publicity over it, and that was, you know, my impression on the thing that he just—I had assumed that somebody from the Judicial Council or somebody like that—I didn't know what the investigation, where they were from or anything. I just thought it was somebody that came around and investigated complaints about judges or something.

Mr. KEITH. Did there come a time when Judge Nixon asked you whether or not the phone call from the farm had been taped?

Mr. HOLMES. Yes.

Mr. KEITH. When did that occur, sir? Was that in this conversation or a later one?

Mr. HOLMES. It could have been, or at a later time when I was down there at chambers, and he said that—wanted to know if I knew if Wiley had taped the phone call. I said I—wanted to know if I would find out and I said I'd be glad to.

Mr. KEITH. Do you recall meeting with Judge Nixon in his chambers in Biloxi at the Federal courthouse?

Mr. HOLMES. That's what I just testified to.

Mr. KEITH. And one of the subjects of your conversation then was whether or not Wiley had taped the phone call?

Mr. HOLMES. That's right; wanted to know if I knew if Wiley had taped the call, I mean, because I assume at that time that it seemed like maybe there was some complaint from Wiley, like Wiley had made some—was making some complaint. I assume that's what it was. That was at that phone conversation.

As a result of that, I did go to Carroll Ingram and asked Carroll if he knew.

Mr. KEITH. What did you understand Judge Nixon to be saying when he asked you whether or not the phone call had been taped?

Mr. HOLMES. Well, just exactly that, I mean that there was—if someone was making an accusation and he was taking the position that he had not talked to anyone about it, then the only way they could prove it would be that if there was some type of taping of it.

Mr. KEITH. In essence, he was saying that I've told them I've never talked with anyone about the case.

Mr. HOLMES. Right, right.

Mr. KEITH. If you say that as well, then the only way to prove that the call occurred would be that if it were taped?

Mr. HOLMES. That's right. In the absence of a taped conversation, it would basically be his word or our word, or whoever's word, against Wiley or whoever is making some wild accusation.

Mr. KEITH. Do you recall when this meeting occurred at his chambers in Biloxi?

Mr. HOLMES. I can't say whether it was—we were down there on a pre-trial in front of a magistrate. I guess I could dig up the date on it when the pre-trial was, but it was probably May, I would say. If that happened in—the investigation started in April; I'd say probably some time in May, maybe. I don't know whether it was before they had interviewed me or not. I don't——

Mr. KEITH. And you were interviewed by the FBI?

Mr. HOLMES. I was interviewed by the FBI and Mr. Richter and Mr. Weingarten.

Mr. KEITH. Now, I believe you indicated that you did, in fact, check with Carroll Ingram to——

Mr. HOLMES. I did, right.

Mr. KEITH. —find out whether or not Wiley taped his phone calls?

Mr. HOLMES. Right, I did.

Mr. KEITH. What did Mr. Ingram tell you?

Mr. HOLMES. Said that he didn't know of any.

Mr. KEITH. Did you report that back to Judge Nixon?

Mr. HOLMES. I'm sure I did, yes, sir.

Mr. KEITH. Now, did there come a time when you were subpoenaed to appear in front of the grand jury?

Mr. HOLMES. I was.

Mr. KEITH. And that would have been the first time that you testified in the grand jury?

Mr. HOLMES. Right.

Mr. KEITH. And that would have been in July of 1984?

Mr. HOLMES. Whatever the date—I guess—July, I believe.

Mr. KEITH. Did you tell the truth in that grand jury testimony, Mr. Holmes?

Mr. HOLMES. Did not, no.

Mr. KEITH. What did you not tell the truth about?

Mr. HOLMES. They asked me if I remembered any other time that I might have talked to Wiley Fairchild and I left out the phone conversation.

Mr. KEITH. And why did you not tell the truth at that time?

Mr. HOLMES. Well, I felt that Judge Nixon already made a public statement that he never talked to anybody at any time, and for me to have come in there and said, yes, we talked to him on the telephone, then I would be making Judge Nixon out not to be telling the truth.

Mr. KEITH. So you decided not to tell the truth yourself in your grand jury testimony?

Mr. HOLMES. Right. Judge Nixon did not ask me to go in there and fabricate or hide or anything like that. It was just that if I'd gone in there after he had made the public statement and press release that he never talked to anybody at any time, I said, well, I—you know, I got to make a choice.

I either go in there and say what Judge Nixon said to the press is just not correct—you know, we did, and so I'd have to make him out—I just had to differ with him and I chose not to differ with him.

Mr. KEITH. So you decided that rather than tell the truth that you would, what, save the judge from embarrassment?

Mr. HOLMES. Well, they didn't ask me—it's kind of one of those things when they don't ask you and you don't answer them, then you're not lying. Nobody asked, so I didn't answer them.

Mr. KEITH. Well, you were——

Mr. HOLMES. I mean, no. I was not telling the—I knew about the phone call and they asked me if there were any other times that I could remember talking to Wiley. I did know about it, but I told them no, I couldn't think of any other, and that was not true.

Mr. KEITH. After that first grand jury appearance, did you have another meeting or conversation with Judge Nixon, do you recall?

Mr. HOLMES. I know I talked to him one time. He was in Hattiesburg and I talked to him over at his chambers, and I want to say the next time I remember talking with him would have been—I talked to Carroll Ingram and Carroll told me he had told him about the phone call and that there was no crime committed, and that everybody ought to just go in and tell them about it because, apparently, he had done the same thing. He didn't tell them about the phone call either, but the——

Mr. KEITH. Well, before we get to that conversation with Mr. Ingram, do you recall any other conversations with Judge Nixon about the investigation or about your testimony, or anything connected with the investigation?

Mr. HOLMES. I remember seeing him over in his chambers one time and he told me at that time that he had found out—he didn't tell me where—he never would divulge where he ever got anything, just said he had heard that what the whole investigation was about was that I was being accused of blackmailing Wiley Fairchild, and that was what the investigation was about.

Mr. KEITH. Was that the first time that you ever heard the accusation that Wiley thought that you were blackmailing him?

Mr. HOLMES. No. That was the first time from any what I consider reliable source. I'd heard street rumor that Wiley had said that I was shaking him down or extorting him, or something. I passed it off because there was ten million wild rumors going on, you know, during it, but that's the first thing from what I considered a reliable source.

Mr. KEITH. This wasn't something that Judge Nixon had told you during the drive to the farm?

Mr. HOLMES. No; the first time of any substance that I put any——

Mr. KEITH. Did he indicate to you in that meeting that you were the target of the investigation?

Mr. HOLMES. Yes, that they were really after me.

Mr. KEITH. Did he give you any advice at that time?

Mr. HOLMES. He told me I ought to hire Mike Fawer and if I get——

Mr. KEITH. And who is Mike——

Mr. HOLMES. Mike Fawer was his attorney at trial.

Mr. KEITH. He was the trial attorney who represented Judge Nixon?

Mr. HOLMES. Right.

Mr. KEITH. Did he suggest to you that Fawer would do the best job for you?

Mr. HOLMES. He just said that in his experience of watching people in trial that he thought Mike Fawer did an excellent job and that if you get indicted, that's who I would get if I were you.

Mr. KEITH. Now, during that first grand jury appearance, your testimony was not completed, is that right?

Mr. HOLMES. That's correct.

Mr. KEITH. And you went back to finish your testimony in the grand jury in September of 1984?

Mr. HOLMES. That's correct.

Mr. KEITH. And then did there come a time when you learned that Wiley Fairchild had been indicted?

Mr. HOLMES. In December or whenever he got indicted, yes.

Mr. KEITH. What was your reaction to that indictment?

Mr. HOLMES. Absolutely shocked to death.

Mr. KEITH. And why was that, sir?

Mr. HOLMES. I had thought the whole time—I mean just based on questions asked me in the grand jury about didn't I go out and see Wiley and ask him for money, didn't Drew Fairchild come to my office and we discuss money, that I thought that the whole brunt of the thing was that they were fabricating some big story, you know, saying that I'd been trying to shake people down, you know, going along with it, and that when Wiley was indicted I thought he was a key witness because Wiley came out of the grand jury one time on television and made the statement, well, I had to go on in and tell the story on those crooks and I went in there and told the story on those crooks, and so forth and so on.

So I just assumed he was talking about me, and I knew good and well either then or now that I wouldn't have shaken down one person for one dime in my life, any time, anywhere. But I thought—I mean just based on Reid Weingarten's entire conduct to the grand jury towards me, I thought that was the probe and where they were going, and based on Judge Nixon saying that that's what he thought, that's what I thought was happening.

Mr. KEITH. During this period of time as the investigation is getting underway and as you're appearing in the grand jury and then with Wiley's indictment, did your relationship with Judge Nixon change at all?

Mr. HOLMES. Oh, yes; we were extremely distant, yes.

Mr. KEITH. And as the investigation progressed, did you become more and more concerned about the phone call and the fact that you hadn't been truthful in the grand jury?

Mr. KEITH. Oh, yes. It was by—that was the only thing I could possibly think of any crime whatsoever that had been committed, a wrongdoing that had been committed in the whole thing. I knew good and well there had never been any money taken.

I knew in my heart whatever relationship the judge had with the minerals, I know, had nothing to do with the handling of the case. I mean, as far as my plea bargaining or getting it from the Government or handling it or going forward had nothing to do with the mineral interests in the thing, and that was what I thought the whole theme of the thing was about.

And the only problem that I had at all, I said, well, I guess if they wanted to make out a charge and say I did not cooperate with them, you know, I withheld evidence on that phone call.

Mr. KEITH. Now, I believe you started to tell us about a time when it came to your attention that the Government knew about the phone call.

Mr. HOLMES. Right. Carroll Ingram told me he had told them.

Mr. KEITH. Had you previously told Mr. Ingram about the phone call?

Mr. HOLMES. Yes, yes, he knew about it, yes.

Mr. KEITH. And, in fact, you had had that conversation about a week or so after the phone call from the farm where—

Mr. HOLMES. I'd say within the week, probably two or three days, you know.

Mr. KEITH. This was the conversation in which——

Mr. HOLMES. Carroll initiated it and told me he had talked to Wiley about it and that Wiley was—I want to say he said he was on cloud nine about it. He appreciated it, or he appreciated you all giving him a call, boost his spirits or whatever.

Mr. KEITH. What did you say to Carroll when you learned that the Government knew about the phone call and that he had told them?

Mr. HOLMES. I said, my God, I said, well, Carroll, I guess you just made me out a liar or a perjurer or something, because I didn't—I did not acknowledge the phone call, or I didn't tell them about it.

And Carroll said, well, no problem; all you got to do is go back in there, because they assured him that there was no crime involved in it and if I'd go back in and tell them that they weren't concerned about the phone call; that since Judge Nixon—since it did not have any effect in the Federal system that Judge Nixon had a perfect right to make any recommendation as a private citizen he wanted to.

Mr. KEITH. So by this time, by the time of your conversation with Carroll Ingram, is it fair to say that you were very worried about the phone call?

Mr. HOLMES. Yes. That was the only thing I would be—the only thing that I knew of that there was anything to be worried about because I knew there had been no bribe or nothing like that, and these deeds certainly didn't have anything to do with—physically to do—I mean any quid pro quo for it. You know, I mean just dates—I never worried about any of that part of it, but I knew good and well that that would have been the only——

Mr. KEITH. And you knew also at that time that you had not told the truth in the grand jury?

Mr. HOLMES. That's right. They asked me a question, how many times I talked to him, and I did not tell them; yet, I knew about it.

Mr. KEITH. And you had done that to save Judge Nixon from embarrassment?

Mr. HOLMES. Well, I thought that—well, he had already made the statement publicly. I mean, either I had to go in there and make that statement or get up and contradict what I had seen in the paper and seen on television.

Mr. KEITH. Now, did there come a time when you had another meeting with Judge Nixon where you discussed the phone call?

Mr. HOLMES. Yes. After I talked to Carroll, I called him and said we need to talk, and he had a jury out and we went down and met in his car.

Mr. KEITH. Who suggested that you meet in the car?

Mr. HOLMES. I don't recall. He could have said they're out; I'll meet you in the car, or I might have said come down or drive over; why don't you come down and meet me in the car? I don't recall. He could have or I could have. I don't remember any big point, but he could—I remember he said the jury was out; he was waiting on a jury to come in.

Mr. KEITH. Let me read you an excerpt from your trial testimony——

Mr. HOLMES. OK.

Mr. KEITH. —at page 764. Question: "What arrangement had been made to meet Judge Nixon?" Answer: "I called him on the phone."

Mr. HOLMES. Right.

Mr. KEITH. "He told me we'd meet in the car."

Mr. HOLMES. OK.

Mr. KEITH. "He'd be downstairs. He had a jury out; he didn't feel he could leave from here."

Mr. HOLMES. That's correct, yes.

Mr. KEITH. So it would be——

Mr. KEITH. I mean, whether or not I asked him to meet me and he said, sure, we can meet there, or he asked me to meet there, I don't remember, but I mean it wasn't any—it wasn't anything to—because, see, he's got a meeting right downstairs, like 15 seconds away. I mean that's no——

Mr. KEITH. Was this after dark?

Mr. HOLMES. Yes, it would be after dark.

Mr. KEITH. And what did you tell the judge when you met with him in the car?

Mr. HOLMES. I told him, I said I talked to Carroll. Carroll told them, oh, about the phone call, and as I recall, he said, well, I don't know what you're talking about; I don't remember any phone call.

Mr. KEITH. Did you tell Judge Nixon that the best thing to do was just to come on in and come clean, tell it like it is?

Mr. HOLMES. Yes. I told him, I said, well, Carroll said he had talked to them and that there was no criminal problem with it; that he had every right in the world as a—even though he was a Federal judge, he had a right to say something in the State court and the people in Washington weren't particularly concerned about it.

Mr. KEITH. And his answer——

Mr. HOLMES. But I said let's go on in and straighten it up. That was the only thing I was concerned about.

Mr. KEITH. And his answer to you was to say that he didn't know what you were talking about?

Mr. HOLMES. Yes. He said, well, I don't know what you're talking about, you know; I don't know anything about any phone call. I guess I'd say I kind of felt a breeze there, so to speak, and I said, well, OK, that's it.

Mr. KEITH. In the conversation, did Judge Nixon also chastise you for talking with Mr. Ingram?

Mr. HOLMES. He did. He said, why did you ever tell Carroll about it. I said, tell him nothing. You're the one that asked me to find out.

Mr. KEITH. That was referring to Judge Nixon's instructions to you to find out if the call was taped?

Mr. HOLMES. Right.

Mr. KEITH. And did you also tell Judge Nixon in that conversation that it wasn't for your benefit——

Mr. HOLMES. That's right.

Mr. KEITH. —that you were trying to find out whether the phone call was taped; that you'd done it at his instructions?

Mr. HOLMES. That's correct. Judge Nixon wasn't particularly concerned about this point. I mean, you know, really, I didn't get any feel of urgency or problem or anything on his mind. I think that, you know, he was—made me feel like there had been nothing done wrong and that he wasn't particularly concerned about it.

I mean, that was the impression I got that he just was not overly concerned.

Mr. KEITH. You were concerned because you knew you hadn't told the truth in the grand jury?

Mr. HOLMES. Oh, I knew good and well. Yes, I was concerned about it because I knew I went in there and did not answer fully that one question, you know, can you think of any other times you talked to Wiley Fairchild, and I could think of one other time.

Now, I'll say this. Had they told me I was a target, subject, or anything, I would not have been testifying.

Mr. KEITH. At the time of your grand jury appearance?

Mr. HOLMES. That's correct. The only thing Reid Weingarten told me he wanted me to do was come forth in the grand jury and explain the experiences. You know, I wasn't prepared for anything else.

Mr. KEITH. Now, after this conversation with Judge Nixon in the parking lot, what happened then with regard to your dialogue with him about the phone call?

Mr. HOLMES. That was basically it. I mean, we shut her down. I went back and talked to Jim Dukes, who was my former law partner.

Mr. KEITH. Was Mr. Dukes also a friend of Judge Nixon?

Mr. HOLMES. Yes, right.

Mr. KEITH. And what——

Mr. HOLMES. And I went back and talked to him and told him, you know, what occurred, and Judge Nixon had an attorney by the name of Bill Goodman representing him and he said, well, he said I got to get hold of Bill. And I said, well, I don't want to blow the judge out of the water because I have no idea what he told the grand jury, but I'm getting ready to go in the darned grand jury and when I go back, I'm going in and recant.

And so they got hold of Bill Goodman, Jim did.

Mr. KEITH. Mr. Goodman was representing Judge Nixon?

Mr. HOLMES. Right, and Bill came back and said the judge told him he didn't know why I called Wiley Fairchild from the farm; that I just developed telephonitis. And I said what in the world is going on here?

Mr. KEITH. That statement wasn't true, was it?

Mr. HOLMES. Pardon?

Mr. KEITH. That statement wasn't true, was it, that you had called Wiley?

Mr. HOLMES. I don't recall being the one to call him, but that was what Bill said the judge said; he didn't know why I called Wiley. We were just out there and I just picked up the phone and called him.

Mr. KEITH. And you knew, of course, that the judge knew very well why Wiley had been called?

Mr. HOLMES. Sure, he knew it, yes.

Mr. KEITH. Now, after that incident you were, in fact, called in for additional questioning by the grand jury?

Mr. HOLMES. Correct.

Mr. KEITH. And that would have been in February of 1985?

Mr. HOLMES. Was that after I pled?

Mr. KEITH. This would be before.

Mr. Holmes. Oh, right, right.

Mr. Keith. And by this time the Government knew about the phone call?

Mr. Holmes. Right.

Mr. Keith. Ingram had told them and Wiley had pled guilty?

Mr. Holmes. Right.

Mr. Keith. And you were asked specifically about your knowledge of the phone call?

Mr. Holmes. Right. Now, I volunteered it; I volunteered the phone call to them. They didn't ask me specifically.

Mr. Keith. Did you tell the whole truth in that grand jury appearance about the phone——

Mr. Holmes. I tried to soft-peddle it. I tried to tell enough of the truth without being too hard on the judge.

Mr. Keith. Well, in fact——

Mr. Holmes. I mean, I was still trying to soft-peddle it.

Mr. Keith. And by soft-peddling it, you told the grand jury that you forgot the details about the phone call?

Mr. Holmes. That I was drinking and that's the reason I didn't tell them before. I didn't want to tell them I was doing it just to protect the judge.

Mr. Keith. That you only had a hazy recollection?

Mr. Holmes. That's correct.

Mr. Keith. That you didn't recall what had occurred?

Mr. Holmes. That's correct.

Mr. Keith. And that wasn't true either, was it, sir?

Mr. Holmes. No. You know, I testified we'd had three or four drinks, and I'm sure it clouds your mind to a point, but in my mind, I mean, I remember it in my mind very vividly.

Mr. Keith. You knew the details and you didn't tell the grand——

Mr. Holmes. Pardon?

Mr. Keith. You knew about the details and you just didn't tell them?

Mr. Holmes. That's right. I knew more details than what I told them. That's correct.

Mr. Keith. Now, did there come a time when Mr. Weingarten advised you that you were about to be indicted?

Mr. Holmes. Right.

Mr. Keith. And can you tell us what happened then?

Mr. Holmes. Got a call from him on a Monday; said that he had received permission to ask the grand jury to indict me. And I ask him for what and he wouldn't tell me. He said, well, we just don't feel like you've been perfectly candid with us.

And I said—well, I said, well, I don't want to be indicted, and he said, well, if you don't want to be indicted, then you'd better have something you can give us, or if there's some information I can take back to my people, or whatever, you know, to do it, and you're going to have to move fast on it. He said he'd be in Hattiesburg on Wednesday and for me to think about it between that Monday and Wednesday.

Mr. Keith. Did you, in fact, then meet with Mr. Weingarten with your attorney?

Mr. **Holmes**. I did. I got Maurice Dantin and we met with Reid Weingarten.

Mr. **Keith**. And what happened at that meeting, Mr. Holmes?

Mr. **Holmes**. Mr. Weingarten said, Mr. Holmes, you know—you do not have to be indicted. And the question was asked, well, what is it that you want, and he said you're a savvy fellow; you know what we want; you think about it. And I said, well, Reid, I've told you everything. Are you talking about the phone call? I mean, I'll go into detail. I mean, tell me what you want.

He said, well, you're a savvy fellow; you know what we want. And Mr. Dantin basically asked him, or did ask him, and he said, well, I assume that what you want is Judge Nixon, and if we could get—if Judge Nixon would resign, a totally, I mean, you know, unsolicited—I mean, if we're just—I mean, I didn't even know——

Mr. **Keith**. This was Mr. Dantin's suggestion?

Mr. **Holmes**. Mr. Dantin asked him, he said, if Judge Nixon would resign, would that end it? And——

Mr. **Keith**. And what was Mr. Weingarten's response to that?

Mr. **Holmes**. He said, well, that's a very novel approach; I'd have to talk to them in Washington, you know, about it. The next day, Mr. Dantin met with them and he was very explicit. He had no authority to speak for Judge Nixon. Judge Nixon knew absolutely nothing about it, but Mr. Dantin was saying, you know, the newspapers and the TV and everything—this was something these people have been living with now for a year-and-a-half on an hourly basis, not a daily basis. I mean, that was all he was saying.

It could be that just to get the darned thing over with, everybody would be waiting. What you all are wanting is Judge Nixon off the bench, and it might be he'd be willing to do it; I just don't know.

And so the next day, I wasn't there, but he met with Mr. Weingarten and he said that he would be willing—that they would be willing to drop the investigation if Judge Nixon would resign and I would be willing to plead guilty to one felony count.

And Mr. Dantin told them that that was totally out of the picture; that I had already said I would not plead guilty to any felony.

Mr. **Keith**. And why was that, sir?

Mr. **Holmes**. Well, disbarment. I mean, I wasn't going to plead guilty to something to get me disbarred, and I just want not going to plead guilty to a felony.

Mr. **Keith**. In Mississippi, a felony is an automatic disbarment?

Mr. **Holmes**. Automatic disbarment, yes, sir.

Mr. **Keith**. Now, after that meeting were you, in fact, indicted by the Hattiesburg grand jury?

Mr. **Holmes**. After that meeting, I was indicted, right.

Mr. **Keith**. And directing your attention to Exhibit 31 of the subcommittee's exhibits, that would be a copy of the indictment?

Mr. **Holmes**. I haven't seen it in a long time, but I am familiar with it, yes.

Mr. **Keith**. Do you recognize that, sir, as the indictment?

Mr. **Holmes**. I get sick on my stomach, but that was it, yes, sir.

Mr. **Keith**. And just to summarize the charges in the indictment, count one was a charge of obstruction of justice, that you had not been candid in the grand jury about the phone call. Is that fair to say?

Mr. **Holmes**. Let me see. I guess so. I don't know exactly which one you're talking about. Go ahead.

Mr. **Keith**. Well, directing your attention to page three of the indictment on the obstruction of justice count—

Mr. **Holmes**. All right.

Mr. **Keith**. —it accuses you of testifying falsely in the grand jury, of tailoring your grand jury testimony, that sort of thing, all about the phone call?

Mr. **Holmes**. OK. A, B, C, and D?

Mr. **Keith**. That's right, sir.

Mr. **Holmes**. OK.

Mr. **Keith**. Is that your recollection of what that first count was against you?

Mr. **Holmes**. Well, I'm sure it is. I'm sure that would be whatever—the indictment speaks for itself. Right, go ahead.

Mr. **Keith**. And in addition to that obstruction of justice count, there were four counts of perjury as well. Do you recall that?

Mr. **Holmes**. I don't think there was a single perjury count, no, sir.

Mr. **Keith**. Excuse me?

Mr. **Holmes**. I don't think there was any perjury in the——

Mr. **Keith**. Well, perjury in the sense of a false declaration before a grand jury, a form of perjury, if you will.

Mr. **Holmes**. I think you'll find there's a tremendous difference between false declaration and perjury, as I found out, you know. There's not a perjury count.

Mr. **Keith**. Well, with regard to those false declaration counts, then——

Mr. **Holmes**. OK.

Mr. **Keith**. —using your terms, one of the——

Mr. **Holmes**. Their terms, not mine. I'm sorry.

Mr. **Keith**. That's right.

Mr. **Holmes**. You can't—I'm just trying to think. I don't know whether the panel understands the difference between perjury and false declaration. I didn't. I thought it took two counts, two witnesses, and had to be material to it.

False declaration just means—because somebody thinks something different is enough for an indictment on false declaration.

Mr. **Keith**. You're referring to the general rule in perjury cases that you have to have two witnesses to corroborate——

Mr. **Holmes**. That's correct, two witnesses, and it's got to be material to the allegation, whereas in false declaration it's just that if the grand jury doesn't think you're telling the truth.

Mr. **Keith**. Well, that's not entirely the elements of the crime of false declaration.

Mr. **Holmes**. Whatever it is, it's just one that—I mean, I don't want to get into a discussion with you, but, you know, in reading the case law on that, my summation is that if they want to indict you for false declaration, you're indicted. I mean, just you didn't say good morning properly and that's enough.

Mr. **Keith**. That was your feeling, but you also recognize at least that under the law the prosecutor would be required to prove beyond a reasonable doubt that you testified falsely, that you intended to testify falsely, and that it was material?

Mr. **Holmes**. Well, I'm sure at a trial that you would. I want to say but for the basis of an indictment, you don't have to.

Mr. **Keith**. Now, those perjury counts——

Mr. **Holmes**. But I'd always thought—I didn't know there was anything but perjury until this.

Mr. **Keith**. Is it fair to say that in connection with your indictment that the only count that really concerned you was that first count, the obstruction count dealing with——

Mr. **Holmes**. The rest, that was pure garbage, absolute garbage.

Mr. **Keith**. You felt very confident that you would win on the other charges?

Mr. **Holmes**. Without any doubt.

Mr. **Keith**. Excuse me, sir?

Mr. **Holmes**. With no doubt.

Mr. **Keith**. OK.

Mr. **Holmes**. As a matter of fact, I was looking forward to the trial on it after I saw what the Government furnished me.

Mr. **Keith**. After your indictment, did you an occasion to meet with Judge Nixon again?

Mr. **Holmes**. I saw him down at Sam Peterson's retirement party, yes.

Mr. **Keith**. And what happened at that point in time?

Mr. **Holmes**. I went up to him and told him that I needed to get together with him; that my case was coming on and we needed to discuss this doggone telephone call. And as I recall, he said, well, he didn't know why I picked up the phone and called Wiley.

Mr. **Keith**. Did you tell Judge Nixon, and I'm quoting from your grand jury testimony at page 56, your final appearance in front of the grand jury—"I think I have kind of—to be frank, I felt like I had ridden that horse about as far as I needed to ride it."

Mr. **Holmes**. I didn't tell him that. That was the way I felt, though.

Mr. **Keith**. That was your feeling about it?

Mr. **Holmes**. That was my feeling, yes. I mean, hell, this thing done come serious, the old boy would say.

Mr. **Keith**. And Judge Nixon's response was——

Mr. **Holmes**. And it was more than just—up until this point, it had been nothing but just trying to save him some embarrassment because I knew good and well that I had absolutely no knowledge or even suspicion of him doing anything wrong criminally. You know, I mean there just wasn't anything.

The only thing I could possibly think about that darned phone call was just an embarrassment, and I felt like I'd gone as far as I needed to go to keep him from being embarrassed. I know he was the chief judge and it might look bad in the press saying the chief judge was meddling with a dope case, or how the press would play it up. But, man, that thing done got serious, you know, as far as I was concerned.

Mr. **Keith**. Did Judge Nixon tell you that he had not mentioned the drive to the farm and the meeting and the telephone call to Wiley in the grand jury? Did he ever tell you that?

Mr. **Holmes**. I never saw—I don't recall it, no. I don't ever remember—I never seen Judge Nixon's testimony, grand jury testimony.

Mr. Keith. But in any of these——

Mr. Holmes. I had talked to Judge Nixon at Sam Peterson's, the last time I think I spoke to him until today. He shook hands with me. I mean, we have not talked since then, I don't recall, I mean.

Mr. Keith. In any of these conversations after the investigation started, you indicated initially that Judge Nixon called you and told you that he had told them, told the investigators that he had nothing to do with the handling of the case.

Mr. Holmes. That's correct.

Mr. Keith. What I'm asking you is did he ever tell you that he had told the grand jury that?

Mr. Holmes. I don't recall him ever telling me what he testified in the grand jury. I'm just going by what I saw in the newspaper and, you know, in the—I assume that he told them the same thing in the grand jury what he had made a public statement, and I got the idea that he handed the press the statement he made before members of the grand jury to read somehow.

You know, maybe his attorney said that or maybe that's just something that someone said, but I want to say that I was of that impression, anyway, that he had testified whatever he testified to at his press conference.

Mr. Keith. Did you ever tell Judge Nixon during any of these conversations that you had lied in the grand jury to save him from embarrassment or to help him out?

Mr. Holmes. Not unless it was—you know, just right offhand, if I had—you know, refresh my memory on it.

Mr. Keith. I gather from what you're saying that it never got that specific.

Mr. Holmes. I don't—down at Sam Peterson's, I remember him telling me this, and it's going back jogging my memory. He said, do whatever you got to do. I remember that. He told me that down at Sam Peterson's. He said, well, you just do whatever you need to do, whatever you got to do.

Mr. Keith. You told the judge that you and he needed to talk about the phone call.

Mr. Holmes. Yes.

Mr. Keith. His answer was, I don't know why you called Wiley?

Mr. Holmes. I don't know why you called Wiley.

Mr. Keith. And was that a true statement by the judge at that point in time?

Mr. Holmes. It was not, no, because he knows why we called him.

Mr. Keith. So at that point in time, Judge Nixon was still denying his involvement. Is that fair to say?

Mr. Holmes. I'd say that he was just stating his position on the thing, that it just never happened.

Mr. Keith. Now, did there come a time when your criminal trial started, Mr. Holmes?

Mr. Holmes. Right.

Mr. Keith. And what happened at your trial?

Mr. Holmes. We picked the jury and during the night after we picked the jury, my attorney and the Government came to a plea bargain agreement where I would plead guilty to one count of contempt of court and that I would receive a sentence; it would be less than a felony. It would not be felony——

Mr. **KEITH**. Contempt is a——

Mr. **HOLMES**. Pardon?

Mr. **KEITH**. Contempt is a crime that is sort of a hybrid.

Mr. **HOLMES**. Pardon?

Mr. **KEITH**. Contempt is a crime that is sort of a hybrid; it's not a felony or a misdemeanor?

Mr. **HOLMES**. It is one that—well, it's not a felony or misdemeanor because it doesn't spell out a limitation of time. If it went over a year, it would be a felony. If it's under a year, it would be a misdemeanor; just a definition of misdemeanor and felony.

Mr. **KEITH**. And, again, from your perspective, in terms of trying to avoid disbarment, you wanted to cap the sentence at a year?

Mr. **HOLMES**. Right. I had told them, I said I would not plead guilty to anything that would bring about disbarment, and I was told that the contempt of court was not a ground for disbarment and if I could plead guilty, you know, to one count of contempt of court that it would not bring about disbarment, and that was it.

Mr. **KEITH**. As part of the plea agreement, the Government agreed to dismiss the indictment?

Mr. **HOLMES**. Oh, yes, and dismiss them all, find me not guilty on all of them, yes.

Mr. **KEITH**. And the contemptuous behavior that was described in the criminal information that was filed as part of your plea agreement again referred to your misbehavior in the grand jury, your tailoring your testimony in the grand jury about the phone call, your failure to testify fully and truthfully about that. Is that correct, sir?

Mr. **HOLMES**. Right, that's correct.

Mr. **KEITH**. And that contempt count that you pled guilty to, that was modeled on that first count of the indictment, on the obstruction of justice count?

Mr. **HOLMES**. I assume so; I don't know. To be frank, I wasn't in the drawing, you know, of it. I mean, it could have been. I mean, I did not get into which one it was drawn on. That was just the wording they came back with and said this is what we'll do.

Mr. **KEITH**. But, factually, it dealt with the same thing; namely, it dealt with——

Mr. **HOLMES**. Yes, sir, it dealt—I said the only thing I felt like that I am guilty of, I said, which I am, that I did try to—I did not openly tell the grand jury about the phone call. They didn't ask, I didn't tell them, and I assume that constitutes contempt, and then when I did tell them, I did not fully—I still tried to soft-peddle it.

Mr. **KEITH**. And the other charges, the false declaration charges that you felt very confident about, those were all dropped as part of the plea agreement?

Mr. **HOLMES**. That's correct. I mean, I——

Mr. **KEITH**. Was cooperation a part of your plea agreement?

Mr. **HOLMES**. Certainly.

Mr. **KEITH**. And what were you to assist the Government in doing?

Mr. **HOLMES**. Just testify truthfully. They wanted me to be willing to take a polygraph if they so asked; that I be willing to testify fully in cooperation. I told them I had no problem, but I had already told them about the darn phone call. You know, prior to that I'd already—I mean, it wasn't anything new to the Government, what I gave them.

Mr. Keith. Did you give the Government a proffer before you pled guilty?

Mr. Holmes. I don't recall. It might have been before or after.

Mr. Keith. And the recommended sentence was no more than one year?

Mr. Holmes. No more than one year, and the only reason I was told that I would not get any more time—maximum amount of time, if I got any time at all, whatever Wiley got, and that—I said what about a fine and they said, well, we can't give you both, you know. It's got to be one or the other.

Mr. Keith. Who told you this?

Mr. Holmes. As I recall, I think all the attorneys in there; I think my attorneys and the Government's attorneys.

Mr. Keith. Were there ever any promises given to you as to what the judge's final sentence would be, any guarantees of what he would sentence you to?

Mr. Holmes. Well, of course, in Federal court they can't give you a Sears Roebuck guarantee, no, sir.

Mr. Keith. And I believe you've told us that you were, in fact, guilty of the offense that you pled to; namely, contempt?

Mr. Holmes. Exactly what I said. I went in there on my own—you know, went in there and stuck my own neck in the noose. You know, I had a choice to make, as I perceived it, between either causing embarrassment to a friend; that I knew good and well there had been no crime committed. I knew good and well there had been no bribe. I knew good and well that his dealing with the mineral interest had nothing to do with the plea bargain or anything I'd done in handling the Drew case, the Drew Fairchild case.

My actions on passing to the file were predicated upon my wanting to make him a hero. Had he not mentioned it to me, then certainly I would have not known he had any interest in it, so there would have been no need to do it.

Mr. Keith. Had he not called you that first time after the investigation started, would you have testified truthfully in the grand jury?

Mr. Holmes. I think if I'd never talked to him about it at all and I knew absolutely there was nothing to hide about it, you know, there was no reason to hide. I mean, what's the point in hiding it? What is there to hide here? It's ridiculous. What is there to hide? I mean, there's nothing to hide.

There was no crime. What was there to hide? I mean, you know, I want to say it was stupid to hide it. What was the point in hiding it?

Mr. Keith. You've told us that you assumed that Judge Nixon was embarrassed. Did he ever tell you that, that he was embarrassed?

Mr. Holmes. No, but I just assumed—there are some things you don't have to spell out to people. I mean, somebody that's in an elected position or in that, I mean, they won't take credit for getting something done. They don't want it spread out all over the papers that Senator so-and-so called and asked that a political friend and heavy contributor called; you know, they're not going to do that.

I mean, I just assumed that and I just took it that I certainly was not going to implicate him in, you know, some big manipulation of something that never happened.

Mr. **Keith**. You've told us that Judge Nixon's mineral deals with Wiley Fairchild had no impact on your handling of the case. Do you know what arrangements Judge Nixon had with Wiley Fairchild?

Mr. **Holmes**. Only what I've heard or read in the papers or saw on TV. If you live down in that part of the country, if you went to church, you heard about it, you know, but I have no personal knowledge. I never seen a deed.

I think I saw one night some big expose on television where big—I mean, man, they really uncovered it. They went to the courthouse records where the deed is recorded and here's proof of a crime. Man, here it is, court record number so-and-so; big expose, you know. That's the courthouse record where the deed was recorded, you know.

And I'd turn on the TV to see what was, you know, coming up next, you know, and they'd always give you a run-by day by day, you know, what was going on and, you know, getting—I was trying to find out, really, what the thing was all about, you know. I thought it was something really big.

Mr. **Keith**. But you have told us that your handling of the case—namely, your decision to pass the case to the files—was, in fact, influenced by Judge Nixon.

Mr. **Holmes**. It was influenced by me; it was influenced by me because I did call Wiley, I did tell Wiley I was going to do it. Had Judge Nixon not mentioned it to me, I wouldn't have called, or he wouldn't have called and I wouldn't have talked to him.

Mr. **Keith**. And at that time, knowing Judge Nixon as you do, you assumed that he was trying to ingratiate himself with Wiley because of the investments?

Mr. **Holmes**. I assumed that he was enjoying the friendship, relationship, whatever it was, and that Wiley certainly had asked him to put in a good word and he was doing whatever Wiley had asked him to do. You know, that was basically—I never—like I say, Judge Nixon very emphatically told me, I'm not asking you to do anything, I don't want you to do—never do anything against your oath of office. You never asked me to; I'm not asking you to. However, Wiley asked me, and I started—as I recall, I might have started to tell him what the facts—he said, I don't want to know what the facts are, and I've never discussed the facts with him in my life that I recall, I mean, you know.

Mr. **Keith**. Did there come a time when you were sentenced by Judge Carr in your case?

Mr. **Holmes**. I was.

Mr. **Keith**. And what was your sentence?

Mr. **Holmes**. A $10,000 fine and a one-year imprisonment.

Mr. **Keith**. And you paid the fine right away?

Mr. **Holmes**. Paid the fine that afternoon in the soaking rain, sure did.

Mr. **KEITH**. And then you challenged your sentence as illegal?

Mr. **HOLMES**. I did.

Mr. **KEITH**. On the grounds that under the contempt statute it could either be a fine or prison, but not both?

Mr. **HOLMES**. That is correct.

Mr. **KEITH**. Judge Carr disagreed and then you appealed?

Mr. **HOLMES**. No, no. Judge Carr agreed that was the law, but he said he fined me on one count and put me in jail on another count, when the agreement always was from A to Z, and they know it and everybody knew it, it was one count, you know, in the Fifth Circuit.

As a matter of fact, I believe Mr. Weingarten tried to make that argument that it was more than one count, and the Fifth Circuit chastised him greatly and said we don't even want to hear that, Mr. Weingarten; don't even come at us with that. It's one count; everybody can see it's one count.

Mr. **KEITH**. You appealed your sentence and were out on bail pending appeal?

Mr. **HOLMES**. Yes, sir.

Mr. **KEITH**. And you won, two to one, in the Fifth Circuit?

Mr. **HOLMES**. I don't know what the number was. A win is a win, you know.

Mr. **KEITH**. So you've never spent a day in jail in connection with your involvement in this matter, is that right?

Mr. **HOLMES**. No, sir. I've been under—you know, been out under bond, been under—you know, been under the court system, you know, where you couldn't travel or move or whatever a couple, three years, but——

Mr. **KEITH**. Were you ultimately disbarred, Mr. Holmes?

Mr. **HOLMES**. I was disbarred. I'm disbarred right now, yes, sir.

Mr. **KEITH**. And that was despite your efforts to try to treat your crime as a misdemeanor to put the one-year cap on there?

Mr. **HOLMES**. I never even got a hearing before the bar. They just disbarred me and I'm disbarred right now, yes; not suspended, disbarred.

Mr. **KEITH**. And at the time you testified in Judge Nixon's trial, you were fighting the Government on appeal about your sentence, isn't that right?

Mr. **HOLMES**. I believe that would be correct, right. They didn't want to sentence me. If you'll notice, from the time I pled until the time they sentenced me, it was a long, long time, and the reason it's so long is because Judge Nixon's attorney, Mr. Fawer, was defending a case down in Louisiana and they couldn't come to trial.

And so they did not want to sentence me until after I testified, and I couldn't help but think, you know, I've heard that before, too.

Mr. **KEITH**. And after you pled guilty, you went back into the grand jury and apologized and told them the truth about the phone call?

Mr. **HOLMES**. I did, I did. I felt badly about it, you know, that—of course, if I had it to do over again, if the Government had told me initially that I was a target or a subject or anything—you know, having been a prosecutor and worked with grand juries so much, I always thought a grand jury was there to protect people and I never dreamed that—I should have done what most of them and I've noticed what all of them do up here.

You know, everybody goes and gets immunity and pleads the Fifth and everything. I always thought it was un-American to plead the Fifth.

Mr. KEITH. And you told the grand jury when you apologized that you were trying to cover up for a friend something that needed no covering up, but that you did cover up for your friend, and that was Judge Nixon?

Mr. HOLMES. That was my opinion. I thought I was doing a friend a favor, yes, but it wasn't that—that he didn't need it. That was his choice to take that position, I guess, to keep down the adverse possible publicity. And if that was his decision, then I certainly was going to try to back him up.

Mr. KEITH. And, again, taking you back to what you've told us earlier, that was based upon that first phone call from Judge Nixon after the investigation started where he told you that he had told the investigators that he had nothing to do with Drew's case——

Mr. HOLMES. Told me that, that's correct.

Mr. KEITH. —never heard of the case, never talked to you or anyone else about it?

Mr. HOLMES. That I told them I never talked to anybody at any time; I don't know what they're talking about. I told them I never talked to anybody at any time two or three times. I said, well, if you never talked to anybody, you never talked to anybody; fine with me, no skin off my teeth. I mean, I knew good and well there had been no crime there.

Mr. KEITH. Just a few more questions for you, Mr. Holmes.

Mr. HOLMES. All right.

Mr. KEITH. Again, you testified at Judge Nixon's trial. Was that testimony truthful, sir?

Mr. HOLMES. As truthful as I know how to tell it.

Mr. KEITH. Did the Government at any point in time suggest to you that you should testify to anything but the truth?

Mr. HOLMES. At what point?

Mr. KEITH. At any point in connection with your testimony?

Mr. HOLMES. Well, certainly, I think the door was wide open to me if I'd been willing to come in with something they wanted to hear, sure. I never would have been indicted.

Mr. KEITH. But they never——

Mr. HOLMES. No, they didn't say come in and tell us a lie, you know, and we'll cut you some slack. But you know what we want; you're a savvy fellow. Why don't you think about it tonight, you know, and come back tomorrow? Well, I've already told you about the phone call. What is there to tell you? Well, you're a savvy fellow; you know what we want. You know, how do you read that?

Mr. KEITH. Prior to Judge Nixon's trial, did they ever suggest to you that you testify in an untruthful manner in connection with his case?

Mr. HOLMES. No, sir, they never.

Mr. KEITH. Did you slant your testimony in a way to please the Government at trial?

Mr. HOLMES. No, sir.

Mr. KEITH. Mr. Holmes, if you could turn to the Committee's Exhibit Number 37, which is Judge Nixon's indictment, I'd ask you to look at—and, frankly, I'm not sure whether you've ever read this document. Have you, sir?

Mr. **Holmes**. Never have, no, sir.

Mr. **Keith**. OK. If you'd look at the fifth—sixth page, I guess it is, count three of the indictment——

Mr. **Holmes**. What page, now?

Mr. **Keith**. The sixth page.

Mr. **Holmes**. The sixth page? I don't see any numbers on here.

Mr. **Keith**. It has count three in it.

Mr. **Holmes**. Count three? Count three, all right.

Mr. **Keith**. Do you see that, sir, where it quotes Judge Nixon's grand jury testimony, beginning with paragraph two there?

Mr. **Holmes**. Paragraph two? All right, I got it.

Mr. **Keith**. In the grand jury Judge Nixon was asked the question, "The grand jury has heard evidence that the prosecutor, the State prosecutor who eventually handled the case was an individual named Bud Holmes. Is he a friend of yours?" Answer: "A very good friend of mine, a longtime friend, yes." Question: "Did he ever discuss the Drew Fairchild case with you?" Answer: "No, not to the best of my recollection. I think I would recall if he had."

Now, Mr. Holmes, you've told us about your conversation with Judge Nixon in April of 1984 where he told that he has told the investigators that he never discussed the Drew Fairchild case, never heard of it, never talked with anyone about the case. Is that correct, sir?

Mr. **Holmes**. That's correct.

Mr. **Keith**. Can you tell us whether, in your view, this testimony by Judge Nixon where he says, "No, not to the best of my recollection," in answer to the question, did he ever discuss the Drew Fairchild case with you, is the truth, the whole truth, and nothing but the truth, as you know it?

Mr. **Holmes**. I mean, you know, I have expressed to you a lot of concern over the word "discuss," you know, and what the word means. I can honestly say we talked about the case; we talked about it exactly as I testified today.

Now, if that becomes a jury question, whether or not our talking about it is called discussion, I believe we use the phrase—you know, somebody will say, well, the weather is hot out there today, and later on, what are you all doing? Well, nothing; we're just discussing the weather.

You know, if that—if you use the word "discussing" in that connotation, then, yes, the wording in the conversation we had going out to the farm and subsequent call to Wiley Fairchild would be discussing.

Now, as far as going before a court and saying let us discuss your case, you know, we did not discuss facts in it. We didn't discuss what plea bargaining had gone on back and forth, Federal, State, things of that nature. You know, as far as discussing what I had done, yes, you know, talking about it.

You know, we had had conversation about it, and if he's saying that we never had conversation about it, then he's not—you know, it's not accurate. What in his mind is discussion, you know, would be up to him, you know, to say, well, not, quote or unquote—you know, we discussed the case, and that's something that I've been questioned by his counsel, you know, whether or not this word "discussion," you know, is what—as far as talking about it, yes, we talked about it.

Now, does that connotate discussion? I mean, apparently, I'm not in a position to judge and say, quote, unquote, we discussed or didn't discuss it.

Mr. KEITH. Fair enough. Let me direct your attention to the next page where there is some more underlined testimony of Judge Nixon from the grand jury.

Mr. HOLMES. All right.

Mr. KEITH. Do you see that, sir?

Mr. HOLMES. In the same page?

Mr. KEITH. It's the next page.

Mr. HOLMES. All right, sir.

Mr. KEITH. Do you see underlined there Judge Nixon's grand jury testimony, "Now, I have had nothing whatsoever, officially or unofficially, to do with the Drew Fairchild criminal case in Federal court or State Court?" Is that a true statement, Mr. Holmes?

Mr. HOLMES. He never asked me to do anything, you know, with the case, as I've testified to here today.

Mr. KEITH. Overtly?

Mr. HOLMES. Overtly, he never asked me to do it. The very fact that he mentioned it to me—I took it on myself and did some things because he did have enough interest in it to merely mention to me what Wiley had mentioned to him.

Now, I did it from there, you know, from that part of it. I assumed he did not object to me doing it and him receiving whatever credit from Wiley Fairchild as having had some interest in the case. I assume he did not mind receiving that credit. But as far as him saying that he did not do anything with it, I could see where he could take that position.

Mr. KEITH. Well, would it also be fair to say that one reasonable interpretation of the phrase "had nothing whatsoever, officially or unofficially, to do"—that would be a false statement in light of his dialogue with you about the case?

Mr. HOLMES. Well, correct. I think in deference to him, had they posed the question to him, did you ever have this and, as a result of talking to him, Bud Holmes do something, would that be a fair statement—his answer might have been, well, yes, I think he did some things because I mentioned it to him. It wasn't because I asked him to, but I think just the very fact he knew that I expressed some interest in it or because of Wiley and my relationship with Wiley, you know, that caused him to do some things that he wouldn't have ordinarily done.

You know, what I'm saying to you is that I want to be fair to the man, you know, on it. I can very easily—where he could say this would be—where he could take that position and be very comfortable with saying that's a true statement because he did not ask me and, to my knowledge, didn't ask anybody in the Federal system to do anything about it.

Mr. KEITH. That he had nothing whatsoever, unofficially, to do with the Drew Fairchild case. Do you think that would be a true statement?

Mr. **Holmes**. Oh, I would—now, if you want to split hairs, then you got to go back to one thing. Sure, the very fact he mentioned it to me caused pressure or caused me to do some things. I mean, that happened, but I'm saying he did not overtly ask me to do it.

Now, I'm saying I could see where he could say I didn't ask him to do anything; I merely—Wiley Fairchild asked me to do it and I told him I don't want him to do anything. I'm not asking him to do—like I've testified a thousand times, he was very emphatic on that. But I did it anyway.

Now, had he not mentioned it, you know, then it wouldn't have happened.

Mr. **Keith**. I understand.

Mr. **Holmes**. That's all I'm saying.

Mr. **Keith**. And directing your attention to the final underlined part there on the same page——

Mr. **Holmes**. OK. Where is that?

Mr. **Keith**. The phrase, "I never handled any part of it, never had a thing to do with it at all." Is that a true statement, "never had a thing to do with it at all," Mr. Holmes?

Mr. **Holmes**. I could say that part, he could probably get by—I'd say that—again, the same argument before, didn't have anything to do with it officially and anything to do—asking somebody to manipulate or to pass it.

Mr. **Keith**. You're saying this for purposes of argument——

Mr. **Holmes**. I'm trying to say he could—I could see where he can honestly say that part of it and be truthful.

Mr. **Keith**. Could he honestly say, "never talked to anyone, State or Federal, prosecutor or judge?" Was that statement true?

Mr. **Holmes**. That would not be true because he did talk to me; he did talk to me about it.

Mr. **Keith**. And the statement, "in any way influence anybody with respect to the case"—I gather your answer would be he did not overtly ask you, but, in fact, he did influence it?

Mr. **Holmes**. That's correct. He talked to me. I'm not saying he intended—I'm not saying he—because he was very emphatic; I'm not asking you to do anything. Judge Nixon was one of these people who I'd say played everything—you know, he's the kind of person—he was not going to do anything that would cause any embarrassment to the court or to himself, you know, openly, or do something like that. I've never known him to do anything dishonest.

But being, I guess, a political animal or growing up in politics and knowing people and doing it and coming from that thing, naturally he's going to mix and mingle with a lot of people. But he did talk to me, like I've testified to.

Mr. **Keith**. Mr. Holmes, let me read you some of Judge Nixon's testimony at trial and ask you to comment on that.

Mr. **Holmes**. All right.

Mr. **Keith**. Judge Nixon was asked the question——

Mr. **Stewart**. Can you give me a page number? I'm sorry.

Mr. **Keith**. Yes; 1625.

Question: "Did Bud Holmes tell you you could never lose money with Wiley Fairchild?" Answer: "Never lose money with him? No." Is that a true statement?

Mr. HOLMES. I don't remember. I never said the statement like that. I'm sure I'd have said that I can't imagine Wiley letting you, or something like that. I think that would be a guarantee. I mean, that would be my opinion that Wiley would not let him.

I don't think he'd let most anybody else he put into a deal lose money. That's just Wiley's nature, you know, and if he asked me—if somebody said, do you think I'll lose money? I'd say, no, not if Wiley put you in it, you're not.

Mr. KEITH. Well, Mr. Holmes, didn't you tell us earlier today that that's, in fact, what you told Judge Nixon when he asked you about Wiley Fairchild?

Mr. HOLMES. I told him exactly what I told you earlier, but read what you just told me. I'm trying to get argumentative with you. What you're saying right there is like a guarantee.

Mr. KEITH. No. Question: "Did Bud Holmes tell you you could never lose money with Wiley Fairchild?" Answer: "Never lose money with him? No."

Mr. HOLMES. I would doubt seriously if I said it quite—I'm sure I would have been very emphatic to say that it would be heard for me to believe that Wiley will let you or anybody else he ever puts into a deal lose money. I've known him to let anybody lose money.

I mean, I've heard stories that he switched things around just because he didn't want it said that he put somebody in a bad deal.

Mr. KEITH. Judge Nixon was then asked the question, "Did Bud Holmes ever tell you if Wiley Fairchild gave you a well and the well went dry that Wiley would pour oil down that well?" Did you ever make that statement to Judge Nixon?

Mr. HOLMES. Sure, I've made that statement before. I've said that was the reputation Wiley has and I told—when the judge asked me about him, I said, judge, I think—you know, he'd been burned in another venture with—in another oil deal that, you know, some people had talked him into or something.

And just in talking, just in general conversation, shoot, man, if you can get in with Wiley and you can get some investments with him, man, I can guarantee you ain't going to be hurt there.

Mr. KEITH. So that Judge Nixon's answer at trial to that question, his answer being no, he did not, would not have been a true statement. Is that correct?

Mr. HOLMES. No. In my opinion, that would not be true. He asked me my opinion and my opinion was just like I told you.

Mr. KEITH. At trial Judge Nixon testified that he drove out to your farm and met you there.

Mr. HOLMES. That's not true.

Mr. KEITH. At trial Judge Nixon told the jury that he told you that Wiley was accusing you of blackmailing him——

Mr. HOLMES. I do not——

Mr. KEITH. Is that a true statement?

Mr. HOLMES. I do not recall that conversation coming up, no.

Mr. KEITH. And at trial Judge Nixon indicated that the meeting at the farm and the phone call with Mr. Fairchild took place in the spring of 1983 after the case was passed to the files.

Mr. HOLMES. That's not correct.

Mr. KEITH. At trial Judge Nixon said that in that meeting in the parking lot that it was he and not you that was urging you to come clean and tell the truth in the grand jury.

Mr. HOLMES. That's not true.

Mr. KEITH. That's all I have, Mr. Holmes.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Keith.

I'll tell you our plans here. We expect to vote pretty soon, and after that vote we will probably recess until tomorrow morning because there is a meeting of Mr. Conyers' subcommittee that is scheduled and we have to attend that. But now we will work under the five-minute rule for members of the subcommittee.

Mr. DeWine.

Mr. DEWINE. I have no questions, Mr. Chairman.

Mr. EDWARDS. I might have a couple here.

Let's get back to the phone call from the Holmes farm, Mr. Holmes. What area code does Hattiesburg have?

Mr. HOLMES. Mr. Chairman, it would be 601.

Mr. EDWARDS. 601?

Mr. HOLMES. 601, yes, sir.

Mr. EDWARDS. And what about the farm?

Mr. HOLMES. 601, the same one.

Mr. EDWARDS. Both 601?

Mr. HOLMES. Yes, sir. The entire State of Mississippi is 601.

Mr. EDWARDS. And when Judge Nixon picked up the phone, did he—how did he know the number?

Mr. HOLMES. As I recall, I looked it up.

Mr. EDWARDS. Pardon?

Mr. HOLMES. I looked it up.

Mr. EDWARDS. You looked it up for him, you're saying?

Mr. HOLMES. Yes, sir.

Mr. EDWARDS. Did he ask you to look up the number?

Mr. HOLMES. I don't recall whether he did or I just looked it up or we talked about it. You know, a discussion—the question was do you mind if I tell Wiley his boy isn't going to jail, and I said, no, sir, you can call him; sure, tell him, go ahead and call him. I mean, you know, I saw nothing wrong with that.

Mr. EDWARDS. As I recall, somewhere in these files you said, well, the matter has already been taken care of, and I guess you were referring to the plea bargaining.

Mr. HOLMES. Yes, sir. When I say taken care of, it had already been—he had already pled guilty; he was already a convicted felon. He was already going to get probation. I mean, what else does the man want, an apology?

Mr. EDWARDS. You remember the whole conversation?

Mr. HOLMES. Yes, sir. As I recall, I mean just—you know, because it was later on whenever I was wrestling with myself over what to do; I remember it.

Mr. EDWARDS. Now, you didn't think much of the counts in your indictment, except one?

Mr. HOLMES. One is the only one I had any concern whatsoever.

Mr. EDWARDS. And the rest of them were a number of pages and you thought they were——

Mr. **Holmes**. The rest, they were publicity just to make a lot of great publicity, and I think if the Federal Government had had any kind of a strong case, they would have certainly gone forward with it.

Mr. **Edwards**. And you don't think much of the counts against Judge Nixon, right?

Mr. **Holmes**. I haven't read the entire indictment.

Mr. **Edwards**. Well, I meant the ones that we were discussing——

Mr. **Holmes**. That's right, and there were areas in there that I felt like he was telling the truth in.

Mr. **Edwards**. —with Mr. Keith.

Mr. **Holmes**. That's right, that I could see very strongly that would have been his feeling in his heart that he was telling——

Mr. **Edwards**. As an experienced prosecutor and lawyer, you would have a problem with count three insofar as the proper interpretation of the word "discuss?"

Mr. **Holmes**. That's correct. It's both sides—it really worked—did we have discussion on the way to the farm? I mean, you know, what took place is what I've testified to, you know. Now, as a lawyer, Mr. Chairman, or as a—if you would discuss a bill on the House, I'm sure you go into in-depth discussion about, you know, the money and, you know, all the various ramification of it.

Or if somebody just came by and said I'm interested in this bill and they said did he discuss it with you, you know, your idea might not be a discussion and the man goes back to your home and says, well, I stopped by and saw the Congressman and I discussed the bill with him. And your answer might very easily have been, well, I appreciate your interest in it and I'll certainly take your thoughts in mind when we have it under—you know, taking his idea of discussion, you say no, we never discussed it; he told me he was interested in it. So——

Mr. **Edwards**. That's about what Webster's Dictionary says.

Mr. **Holmes**. I've never read their—but both sides—I mean, one side is saying he never discussed it and the Government is saying that's enough to constitute discussion. I probably use the word "discussion" if somebody said, do you think it's going to rain today? I say, what you all been doing? We've been discussing the weather.

Mr. **Edwards**. But you do find some substance in count four to the words "and never talked to anyone, State or Federal, prosecutor or judge?"

Mr. **Holmes**. That's right. He talked with me. Now, the only problem with it, if you go ahead and finish it on out with the intention to influence, that's the rest of it that—I mean, I don't know. I mean, all I got—I have to make up my mind what I thought, and he, and he alone, knows what was in his mind, you know, when he mentioned it to me.

I assume that he wouldn't have mentioned it, although he was very emphatic that he didn't want to put me on the spot or wasn't trying to put me on the spot about it. I mean, Mr. Chairman, this case was just such a real, quote, unquote, nothing kind of a case. It just wasn't—you know, it just wasn't a big, celebrated case, you know, down there.

It was a man who had been estranged from Mr. Wiley Fairchild. I mean, most people didn't even know Mr. Fairchild had a son, you know. The Federal Government had made the arrest; they hadn't pursued it. I picked it up and pursued it on down. You know, a man came in and agreed to plead guilty to it. I mean, it just wasn't that——

Mr. **Edwards**. Well, it is disturbing that in all of these pages, books and books, we're not talking about criminal activity.

Mr. **Holmes**. Right.

Mr. **Edwards**. Only when we get into the hallowed halls of the grand jury——

Mr. **Holmes**. That's right.

Mr. **Edwards**. That's where the criminal activity allegedly occurred.

Mr. **Holmes**. Yes, and when Mr. Weingarten called me up—or I called him, excuse me—and I taped it, you know. As a matter of fact, Carroll Ingram said you ought to call and find out, you know, what it is. And I asked him, I said what is it you want me to explain? What do you want me to say? You know, what is it you're after at the grand jury? I just got a subpoena.

Mr. Weingarten and I got into a real, real big fight during the investigation. I mean, I didn't know who he was. He kept criticizing me about the way I'd handled Drew's case and kept on wanting to know why I didn't make a memorandum of my meeting with Judge McKenzie and Wiley.

I mean, that's a little old small community down there. Everybody knows everybody by their first name. I mean, you know, it's not a big, widespread thing. And I said, well, I just didn't. I didn't think anything about it. I took him out—what didn't you take a court reporter out there? I said, a court reporter out there at a meeting?

I'm just trying—here, I've got a bunch of cases I'm trying to get rid of and I take somebody—well, why didn't you make a memorandum? And I said I never made a memorandum in my life, and I guess I was stupid. And I knew I wasn't running for reelection. I just served four years and I guess I was enjoying the ego trip, is the only thing I can figure, being district attorney down there where I wouldn't even take a salary or anything for four years.

I guess I considered myself some—you know, that I had a right to basically do it as long as there wasn't any criminal activity to it. And I said, well, I just went out there and did it, and that's the way I did it. And he kept telling me, no, you should have made a memorandum.

He said, you know, I've been a prosecutor, and I said you really think I ought to have made a memorandum? I said, you really think I ought to have made a memorandum? You think that's the way—he said, yes, yes, yes. I said, I tell you what you all do; you ought to bring your yankee so-and-so down to Hattiesburg and qualify and stay here six months, pass the bar, and you run for district attorney.

If you can get 50 percent of the votes, plus one—that's what it takes, 50 percent—then you come in, you be the district attorney and you serve and you make all the memorandums you want to.

But while I was district attorney, I didn't make memorandums; I got my power from the people.

You come down and get it and you make memorandums, OK?

From then on, it was downhill.

[Laughter.]

Mr. HOLMES. He had the power to do it, and I'm disbarred today. And do you know something? Mr. Weingarten proved to me he was right. I never realized—I always thought the grand jury was something to protect the people. I didn't we know we had a star chamber. We do.

Mr. EDWARDS. Do you think he had undue power or influence in that grand jury?

Mr. HOLMES. He took something where there wasn't any crime committed, no money passed, no nothing, and you see where we are today. I can show you the results.

Mr. EDWARDS. Yes. It really is a shame we're here today.

Mr. HOLMES. There's no reason to be. You can back and take my first time in the grand jury. He said how many times did you go ask Wiley Fairchild for money? What? Didn't Drew Fairchild come to your office and you all discuss money? No. I get indicted on it; they say I lied. You know, I mean, it's—you got to go through it one time to appreciate it.

You realize why everybody, when something comes up, they go get lawyers and they start getting the Fifth and Fourth and Eighteenth, and everything else, and immunities and, you know, everything else. You realize it because you end up being trapped.

I mean, the Federal people that I hired later—Pat Fanning was—everybody, they had died laughing. You know, man, a little country lawyer; you thought you knew something about this, that and the other. Man, you've learned some stuff, haven't you, you know, and that's what you got.

I mean, that's the reason this false declaration—it was passed to fight organized crime. Nobody in Congress is going to not vote for something to fight organized crime, but yet it gives the prosecutor the right to come in and give you—you take the Fifth. They come back and they immunize you and then they ask you something, what's the weather like, and you say I think good, and somebody else comes in and says, no, it was bad. Well, they got you indicted for a false declaration. That's all they got to do. That's the whole purpose of false declaration.

They said too many criminals were getting off under immunity, so now you might as well throw out the Fifth, your rights in the Fifth Amendment, because all they've got to do is immunize and pop you right back in there. If they get one person to differ with you, then you're indicted.

Mr. EDWARDS. In your declaration of February 1988, page two, paragraph five, you stated that on March 27th, 1985, you and your attorney, Maurice Dantin, met with Reid Weingarten and Weingarten told you that you were likely to be indicted, but that you didn't have to be indicted, quote, "if you would fill in some gaps in Weingarten's investigation."

Weingarten said that you, Mr. Holmes, were a, quote, "very savvy guy."

Mr. HOLMES. I don't recall the "filling in the gaps" part.

Mr. **Edwards**. No.

Mr. **Holmes**. I believe I commented to someone—I believe I commented at the——

Mr. **Edwards**. What do you think he meant by that?

Mr. **Holmes**. Savvy?

Mr. **Edwards**. What did Weingarten——

Mr. **Holmes**. He wanted Judge Nixon, I mean, because Maurice just hit him head-on with it. He said I assume what you all want is Nixon off the bench.

Mr. **Edwards**. But what did he want you to tell him about Judge Nixon?

Mr. **Holmes**. I have—I just assume he wanted me to come up and tell—they had all kind of wild things about Judge Nixon is supposed to have gone with us out to Las Vegas and he came out of there with $500,000 in a suitcase; you know, wild things. You know, I have no idea what he was talking about.

Judge Nixon—Wiley Fairchild had said that I had taken Judge Nixon to Aspen, Colorado, and skiing. I never been skiing in my life. I don't know if he ever has, but yet that he knew for a fact that Nixon had gotten $10,000 out—that I had gotten a $10,000 fee to go fix a case in front of Nixon, and here the judge—here, they had already let that go before the grand jury. They knew that wasn't true, but yet they let Wiley Fairchild testify to it.

That I had killed Bill Porter, and so there was $360,000 worth of life insurance on him—why, there wasn't a dime's worth of life insurance on the man. Yet, they let Wiley testify to all that, and they're wanting me, I assume, to come in and tell some of that stuff. They let Wiley tell it. I assume that's what they wanted me to say to verify it, because at this point I hadn't seen Wiley's testimony. You don't get to see that until three days before you're going to trial; then they give it to you.

I didn't know what he was talking about, but I assume that's what he was trying to get me to come in and tell him some of that stuff. Of course, after I see it, I know it's a total fabrication, just wild. I mean, it's things that you hear about.

To think that your Government would let somebody intentionally go in before a grand jury, and him knowing it or having access to the records that absolutely refute it—and walk across the hall; there was the Shows case. I mean, that was their file right there, you know, where Shows was in front of Judge Russell; didn't cut him one minute.

It wasn't even in front of Nixon. Yet, he testified he knew for a fact that Nixon had gotten—that I had gotten—he assumed—he said, well, did Nixon get any of the $10,000? Well, I assume he did; he cut the fine down, he cut the time down.

Mr. **Edwards**. Well, they allowed information in the trial about the improvements on Judge Nixon's house and your connection with that, I believe.

Mr. **Holmes**. I don't recall it being at the trial; it could have been.

Mr. **Edwards**. Do you have a building company that put improvements on——

Mr. **Holmes**. I had—yes, sir; well, my father-in-law, Marsha's daddy, yes. He did some work on it. He paid for it; excellent builder, excellent contractor.

Mr. **Edwards**. But were the bills paid very late, do you remember?

Mr. **Holmes**. I don't recall. They were paid whenever, I guess, he billed him. I didn't get into it. I guess it—I'd kind of halfway gotten him the job and I guess he might have been timid about setting it up ahead of time, you know, saying you'll do this, that, and the other one. Somebody asked me. I said I don't know. I said I assume he paid him.

Mr. **Edwards**. You presume the bills were paid with an additional loan on the mortgage or something like that?

Mr. **Holmes**. I assume so. I don't—I have no personal knowledge. I know I didn't pay him.

Mr. **Edwards**. Thank you.

Mr. DeWine, do you have any questions?

Mr. **DeWine**. Did the prosecutor give you any other indication besides what you've already testified to concerning how they initially began this investigation?

Mr. **Holmes**. No, sir.

Mr. **DeWine**. No other indication of anything that they thought they had against Judge Nixon?

Mr. **Holmes**. No, sir. Later on into it, they got into the Petit Bois Island case, you know, in my grand jury, and then after I pled then they wanted to question me extensively about Petit Bois Island. They did that; they went through a very, very, very extensive—he asked me what my understanding—I told him on it.

Mr. **DeWine**. What was your understanding?

Mr. **Holmes**. What, on Petit Bois Island?

Mr. **DeWine**. Yes.

Mr. **Holmes**. That after the judge had rendered a verdict that Mr. Stocks had gone in, agreed to cancel the judgment if he could keep the island, and the Government, you know, said they wanted the island.

Mr. **DeWine**. Your jurisdiction that you were prosecutor is a jurisdiction of what population?

Mr. **Holmes**. Probably about a max of $50,000, I would say.

Mr. **DeWine**. How many lawyers would you have in the county?

Mr. **Holmes**. I would say probably 150, maybe 200; I don't know. I'm talking to—I would have no—I would say around 150 or 200.

Mr. **DeWine**. Everybody knows everybody?

Mr. **Holmes**. Everybody knows everybody, particularly us older ones, you know, that have been around. I mean, back when I started I think there were probably about 40 of us and, you know, you just—there's just one bank in town, or maybe two.

Of course, today everybody—you know, it's bigger, but you still have basically the same financial base.

Mr. **DeWine**. I have nothing further.

Mr. **Edwards**. Mr. Stewart, we obviously are not going to—you're not going to be finished with Mr. Holmes by the time we have to quit, which will be, at the very most, a little over half an hour. So do you want to start or would you rather wait until tomorrow morning, and we would begin at nine o'clock?

Mr. Stewart. Mr. Chairman, if maybe—I'm prepared to go forward at this point if it would be——

Mr. Edwards. Yes, you're recognized, but we might be interrupted and we do have to stop at a few minutes before four.

Mr. Stewart. If I could have about a two-minute recess to talk to my counsel, my co-counsel?

Mr. Edwards. Yes. The committee is recessed for five minutes.

[Recess.]

Mr. Edwards. The subcommittee will come to order.

Mr. Holmes, I believe that Mr. Stewart will now ask you some questions.

Mr. Holmes. Thank you.

Mr. Stewart. Thank you, Mr. Chairman.

Mr. Holmes, right as we broke you had been asked several questions from the subcommittee concerning Petit Bois Island.

Mr. Holmes. All right, sir.

Mr. Stewart. You had no direct involvement in that case as a lawyer or anything like that?

Mr. Holmes. Indirect, direct, or any other kind.

Mr. Stewart. OK, right, fair enough. Were you questioned before the grand jury about Petit Bois Island?

Mr. Holmes. Certainly.

Mr. Stewart. Do you recall when that was?

Mr. Holmes. Sure, the second day of my first appearance.

Mr. Stewart. That was on September 5th of 1984?

Mr. Holmes. Whenever it was. They kept me around all week and put me in there for about an hour or two, then told me to come back.

Mr. Stewart. That was in July they kept you around?

Mr. Holmes. That's correct, right.

Mr. Stewart. You just testified a couple hours and then you came back?

Mr. Holmes. That's correct.

Mr. Stewart. When you came back, they asked you about Petit Bois Island?

Mr. Holmes. That's correct, sir.

Mr. Stewart. Do you recall the substance of the questions?

Mr. Holmes. It's in my grand jury testimony. As I recall it, they wanted to know if I knew a fellow by the name of John Stocks, and I said I did. They wanted to——

Mr. Stewart. Mr. Stocks was involved in the ownership of Petit Bois Island?

Mr. Holmes. Right. John Stocks was, I believe, the man that condemned it, or he bought it——

Mr. Stewart. Right.

Mr. Holmes. —had bought the island, and I said I did, and wanted to know where I met him. I told them I'd gotten a phone call from him, and wanted to know if I could remember about when. I told them about when. It's all there in the grand jury.

Mr. Stewart. OK, and they asked you whether you'd had any conversations with Judge Nixon about Petit Bois Island as well, didn't they?

Mr. Holmes. I don't recall. They very easily at some point—I mean, it's whatever is in there. I'm sure they did. At some point during my grand jury or debriefing or whatever you want to call it, they did, certainly, but whether or not it was in my first grand jury time, I do not know.

Mr. STEWART. And I do have that grand jury testimony before me. There is a question, "You never discussed Stocks with Judge Nixon?" And the answer was, "No, sir."

Mr. HOLMES. OK.

Mr. STEWART. That was true at the time?

Mr. HOLMES. Oh, yes, that's right.

Mr. STEWART. Yes.

Mr. HOLMES. That was in my first grand jury? I don't—you know, I didn't recall it.

Mr. STEWART. It's the second half of your first grand jury.

Mr. HOLMES. OK, that's right.

Mr. STEWART. It's dated September 5, 1984.

Mr. HOLMES. OK, right.

Mr. STEWART. Now, who was the prosecutor questioning you at that time?

Mr. HOLMES. Reid Weingarten.

Mr. STEWART. OK. Now, Mr. Weingarten testified before this subcommittee a month ago and I asked him if he'd ever questioned any witnesses before the grand jury about Petit Bois Island and he said no. And then I pressed him on it; he said maybe he'd handled the document custodian before the grand jury. This was the transcript of June 9th at page 147. Was his statement true?

Mr. HOLMES. No, sir. He questioned me the second time about Petit Bois Island.

Mr. STEWART. Mr. Weingarten did?

Mr. HOLMES. Yes, sir. It's in my grand jury because they brought it up two different times in my grand jury.

Mr. STEWART. Do you have any idea why Mr. Weingarten would lie—would make a false statement about that?

Mr. HOLMES. I'd rather not comment on that. He's a United States attorney, or was, and——

Mr. STEWART. Well, he's in private practice now.

Mr. HOLMES. That's right. I've been indicted; I've been had an education, too, so I'd just rather not comment.

Mr. STEWART. You have some ideas you'd rather not share?

Mr. HOLMES. You know, if the committee wanted me to, I'd tell them, but——

Mr. STEWART. Well, you were not before the grand jury as a document custodian, were you?

Mr. HOLMES. Certainly not.

Mr. STEWART. Now——

Mr. HOLMES. I offered—he asked me about some documents and I offered to—come on, let's go down to my office and we'll dig them out, and he said he didn't want me to; that for me to look them and bring back next time I came.

Mr. STEWART. I came.

Mr. HOLMES. Which I did. I mean, it seems like he sent some FBI people and I gave him whatever he wanted.

Mr. STEWART. OK. Now, you've been asked about your meeting with Mr. Weingarten right before you were indicted.

Mr. HOLMES. Yes, sir.

Mr. STEWART. And you described that in your testimony so far today. Now, did you understand that Mr. Weingarten was offering you, in effect, that you did not have to be indicted if you could give the Government something on Judge Nixon?

Mr. HOLMES. Yes, that was—I mean, no other conclusion could you come to.

Mr. STEWART. OK. Now, Mr. Weingarten has testified here last month, page 44 of his June 10th appearance, that he did not make such an offer to you. I take it you think he's wrong about that?

Mr. HOLMES. Very emphatically. I testified in court on it. I mean, it's throughout my testimony. Mr. Fawer was cross-examining. He never took issue with it then.

Mr. STEWART. OK. Mr. Dantin's declaration——

Mr. HOLMES. And Mr. Dantin was right there when he made it because that was when he made the statement, you mean, well, let me just—what we're trying to get to—you all just want Nixon off the bench, is that right? And, of course, he didn't deny it, and he said, well, if he would resign, would that put a stop to it?

Mr. STEWART. OK. Now, both you and Mr. Dantin understood—and you've talked this over with Mr. Dantin—both you and he understood——

Mr. HOLMES. No question about it.

Mr. STEWART. OK.

Mr. HOLMES. That's what he meant.

Mr. STEWART. Do you know any reason why Mr. Weingarten would make a false statement on that subject?

Mr. HOLMES. There again, I'd rather not comment. He's in private practice, isn't he?

Mr. STEWART. That's my understanding.

Mr. HOLMES. He got a conviction on a Federal judge, didn't he?

Mr. STEWART. Well, let me ask you about that. Were you ever aware of any comments by Mr. Weingarten concerning his interest in convicting a Federal judge?

Mr. HOLMES. I don't—you know, there are so many rumors; so many things were bantered around. You hear so many generalizations. I heard a lot of generalized statements that he purportedly made, you know, during this investigation.

Mr. STEWART. You heard these from your counsel.

Mr. HOLMES. How many times I was sitting in there when he would make the statements, going over and over with Pat Fanning and Jim Dukes——

Mr. STEWART. They were your lawyers?

Mr. HOLMES. —the various aspects of the case, and lawyers would be talking back and forth and there would be a lawyer talking and I mean, of course, a world of things that, you know, was just being said, yes.

Mr. STEWART. Yes.

Mr. HOLMES. I heard him make a lot of different—I say I heard him; I want to be very, very careful because you get indicted just for being confused on what day it is. And so I don't want to say I heard him say anything, but generally I know that a lot of wild statements were made, yes.

Mr. **Stewart**. Did you have reported to you that Mr. Weingarten said that you can indict a Congressman any day, but a Federal judge, now that's hard to do?

Mr. **Holmes**. I don't know necessarily about the indictment. He said you can convict a Congressman any time, but getting a Federal judge convicted is tough.

Mr. **Stewart**. OK. While you were waiting to testify at Judge Nixon's trial, did Mr. Weingarten talk to you at all about the gratuity count against Judge Nixon, that count one? Do you recall any comment he made?

Mr. **Holmes**. I don't—I mean, we went in depth a lot of times on discussions, but I can't—I don't—you know, I'd be remiss if I'd say I knew that he had actually talked about it. I do know that I have said and said and re-said again that the deeds that Judge Nixon, or the minerals or whatever he got from Mr. Fairchild, I've told and retold them, had nothing to do with my plea bargaining or whatever deal I'd cut with Drew. But my subsequent conversation and promise to pass to the file to Wiley, or whatever—that I was influenced by that.

Mr. **Stewart**. Let me ask you a question just about count four of the indictment against Judge Nixon. You have been asked a number of questions about it. I'm just going to read it to you. You don't have to haul it out.

At the end of the charge—and I think you're aware from your own experience that at the end of a perjury count there has to be an aversion of truth; the truth averment, it's called, actually, where they say what actually was true that should have been said. You're familiar with that?

Mr. **Holmes**. Not really. I mean, if you explain it to me, I mean, I'll be——

Mr. **Stewart**. All right. There is the statement made at the end of count four that the statements made by Walter L. Nixon, Jr., were false—I'm condensing this—and that the defendant, Walter L. Nixon, Jr., did have something to do with the Drew Fairchild drug case, as he had sought to influence the case by asking State Prosecutor Paul H. "Bud" Holmes to do what he could for Drew Fairchild.

Mr. **Holmes**. That's not true.

Mr. **Stewart**. That's not true?

Mr. **Holmes**. No. He did not ask me to do anything. To the contrary, he told me not to.

Mr. **Stewart**. So——

Mr. **Holmes**. He wasn't asking me to do anything.

Mr. **Stewart**. So the allegation there in count four is just not true?

Mr. **Holmes**. No. That allegation—if he says that he asked me to do something, then that is not true.

Mr. **Stewart**. Now, I want to go back and cover a couple of things that have been covered, but just I want to—I think because you tend to speak quickly and think quickly that maybe things you were trying to get out haven't been explained fully.

You mentioned when you first went to the grand jury Mr. Weingarten called you up and, as I understand your testimony, he said, I want to talk to you—I'm going to ask you about the continuances in Drew Fairchild's case.

Mr. HOLMES. I asked him, I said what is it—what's the—in other words, what do I need to be prepared? What did you need? I mean, did you want to talk to me before I went in the grand jury? I mean, that's the normal procedure to prosecute. You go sit down and talk to a witness and say here's some areas; you know, be refreshed, where you can bring before the grand jury, you know, this factual situation that you have personal knowledge in.

Mr. STEWART. OK. It's standard, from your experience as a prosecutor——

Mr. HOLMES. Very standard.

Mr. STEWART. —to sit down with the witness?

Mr. HOLMES. I hadn't heard from him, so I called him just to ask him what it was.

Mr. STEWART. OK, and he told you he was just going to ask you about some continuances in Drew's case?

Mr. HOLMES. Basically, we discussed the case. We joked about it. I believe you have a copy of our telephone, you know——

Mr. STEWART. Actually, I don't.

Mr. HOLMES. Well, anyway, in it he said—I said, well, primarily what is it you want? And he said, well, be sure—just be able to come to the grand jury and be able to discuss the continuance in the Drew Fairchild case. So I thought that was the bottom line that he was after.

Mr. STEWART. All right, and when you got to the grand jury, that turned out not to be what he was interested in asking you about?

Mr. HOLMES. No, not at all.

Mr. STEWART. Do you feel like you had been deceived?

Mr. HOLMES. Well, certainly. I mean, I feel like I was a target from the beginning, and if I had been notified of that, certainly I would have gone and sought counsel, who I'm sure—just like they've all laughed at me and told me what an idiot I was not going and, you know, getting immunized before I went in there.

Mr. STEWART. When you were a prosecutor, was it your practice to deceive a witness before you put him before the grand jury?

Mr. HOLMES. Certainly not. I mean, a grand jury is something sacred. It's something we broke away from England with. It's something to keep—do away with star chamber proceedings. It was something to protect those that are accused, to keep unjust and over-zealous kings in those days to just throw people in prison without doing it before you can indict, because an investigation alone, much less an indictment, is just so destructive, you know, to a person.

And so the grand jury is set up to be a buffer between the person they're looking at and the king or the prosecutor.

Mr. STEWART. OK. I want to ask you now a little about your indictment.

Mr. HOLMES. All right.

Mr. STEWART. It's Exhibit 31, but I don't believe you need to flail around for it. There was a count—count two of that indictment has an allegation that this testimony was false, and let me read to you the testimony, and you have referred to it here today.

"Did you ever discuss money with Drew Fairchild prior—money and the smuggling case, prior to the indictment?" And what's underlined is your answer saying "Never."

Mr. Holmes. That's correct.

Mr. Stewart. Now, I was hoping you could explain what you understood that question to ask about and what you understood the Government claimed you were lying about.

Mr. Holmes. The question was asked of me did—how many times did I ever go out to see Wiley? Did I ever ask Wiley Fairchild for money?

Mr. Stewart. All right.

Mr. Holmes. I said certainly not.

Mr. Stewart. OK.

Mr. Holmes. Did you ever discuss money with Drew Fairchild? I mean, this was, you know, not the exact order.

Mr. Stewart. And you understood——

Mr. Holmes. I said certainly not, never.

Mr. Stewart. And you thought they were talking about a bribe?

Mr. Holmes. Right, and I thought at that time, because Wiley and them appeared on television, Wiley and Drew and all them, that afternoon saying, well, I went before the grand jury and I had to tell them the truth on a lot of people——

Mr. Stewart. OK, but——

Mr. Holmes. And I assume that what they were—I'd already seen this on TV and I assumed they were accusing me of hitting him up for money.

Mr. Stewart. But when you got to sit down with the prosecutors and find out what they said their case was on that, it wasn't that you had taken the bribe?

Mr. Holmes. Oh, no. When I got the—you got my indictment?

Mr. Stewart. Yes.

Mr. Holmes. Read my indictment and see what they indicted me with. They said, well, I lied when I said we never discussed money.

Mr. Stewart. It says, "During that meeting, Paul H. 'Bud' Holmes did ask Drew Fairchild if he had any money for the case."

Mr. Holmes. That's what they——

Mr. Stewart. So they weren't asking about a bribe.

Mr. Holmes. Well, how do you interpret it?

Mr. Stewart. I don't know. I got to ask you the question.

Mr. Holmes. Go ahead and read it again.

Mr. Stewart. It says that, "During the meeting with Drew Fairchild, the defendant did ask Drew Fairchild if he had any money for the case."

Mr. Holmes. But nowhere in Drew's testimony is there anything like that.

Mr. Stewart. When you saw Drew's testimony, you realized that?

Mr. Holmes. Sure. He said that I never asked him for anything.

Mr. Stewart. And the only thing you discussed with him was whether he could pay a fine?

Mr. Holmes. I don't even remember him coming to the office.

Mr. Stewart. I understand, but all he said you discussed with him was——

Mr. **Holmes**. What I was indicted on was they said that he and Bill Porter came to the office before he went to Jackson, and I suggested that if you go up there and cooperate, possibly you can get off with probation and a fine. Now, that was what——

Mr. **Stewart**. OK.

Mr. **Holmes**. —they said I lied about. They said we discussed money by me saying you can go on up there maybe and get off with a fine. That was the basis of it.

Mr. **Stewart**. So the Government's theory was that your reference to a fine was a discussion of money?

Mr. **Holmes**. That's right.

Mr. **Stewart**. And that's what they indicted you for?

Mr. **Holmes**. That's correct.

Mr. **Stewart**. And when you heard the question, what you understood them to be asking you about was where you shaking Wiley down for a bribe?

Mr. **Holmes**. That's correct.

Mr. **Stewart**. OK.

Mr. **Holmes**. Whether I was chasing Drew for a bribe or I was chasing Wiley for a bribe. Never.

Mr. **Stewart**. Let me ask you about the Preacher Shows case.

Mr. **Holmes**. OK.

Mr. **Stewart**. You did mention that, too. Actually, the case involved his son, a man named Billy Shows?

Mr. **Holmes**. He's a doctor, that's correct.

Mr. **Stewart**. OK.

Mr. **Holmes**. Dr. Billy Ray Shows.

Mr. **Stewart**. And you saw Wiley's grand jury testimony where he said he'd seen a canceled check that was paid to you?

Mr. **Holmes**. That's correct.

Mr. **Stewart**. And he assumed it was going to Judge Nixon, or words to that effect?

Mr. **Holmes**. Said they were sure it went to him. Why else would he have given it?

Mr. **Stewart**. Right.

Mr. **Holmes**. Yes.

Mr. **Stewart**. Can you tell the real story as to why you were involved with the Shows case?

Mr. **Holmes**. Sure. On a Sunday morning I was getting ready to go to church and these two men came up to my house, knocked on the door, said that—identified themselves, said that Wiley told them to come see me, that he was needing a lawyer, that he had fallen out with his lawyer in Jackson; that he had his case on appeal and wanted to know if I would take the case. I said, well, let me look into it.

I called the attorney in Jackson. The attorney in Jackson said he had not been paid and he would not finish the appeal. The man had already been convicted of receiving stolen property, I think is what it was, and he had not been paid, but that if I would see to it he got his money, he'd go ahead and finish the appeal and everything down in court.

So I got the money, and I assume I sent the whole $10,000; I might not have sent it to him all, but what I might have gotten part of it and kept, I don't. But I paid whatever Jim McIntyre said he wanted, you know, for it.

The appellate court affirmed the decision, came back. I took it up on a Rule 35 in an attempt to get it reduced.

Mr. **Stewart**. Now, a Rule 35 is just to try to reduce the sentence?

Mr. **Holmes**. After appeal and everything, you go back before the court and you ask them to reconsider the sentence.

Mr. **Stewart**. Now, did you do work on that?

Mr. **Holmes**. Sure. I drew up a pleading and went into court——

Mr. **Stewart**. OK.

Mr. **Holmes**. —and pled the case. The case was denied.

Mr. **Stewart**. OK. Now, that was before Judge Russell?

Mr. **Holmes**. It wasn't in front of Judge Nixon at all. It was on front of Judge Dan Russell.

Mr. **Stewart**. It had nothing to do with Judge Nixon?

Mr. **Holmes**. Sure.

Mr. **Stewart**. Did you kick back something to Judge Nixon on that?

Mr. **Holmes**. Judge Nixon—I've never kicked back anything to him.

Mr. **Stewart**. OK.

Mr. **Holmes**. I doubt if I even got any money myself to kick him back with.

Mr. **Stewart**. And you know that the Federal Government knew that at the time Wiley Fairchild said that in testimony?

Mr. **Holmes**. Well, certainly. The file is right there at their disposal. With Billy Ray, I had Billy Ray coming down to testify on my motion to set aside some of the stuff and he developed car trouble and couldn't, you know. The rest—the speculation was there, but he was going to come.

Mr. **Stewart**. All right. Now——

Mr. **Holmes**. But he told me they'd already interviewed him about it; the Government had already interviewed him.

Mr. **Stewart**. Is that right?

Mr. **Holmes**. Oh, yes.

Mr. **Stewart**. OK.

Mr. **Holmes**. He said they've already interviewed me about it; I don't want to get mixed up in that.

Mr. **Stewart**. That's Billy Ray Shows, right?

Mr. **Holmes**. Sure. They had the file right there at the courthouse.

Mr. **Stewart**. All right. So despite all that, Wiley was still allowed to testify about that before the grand jury?

Mr. **Holmes**. Certainly, certainly, sure.

Mr. **Stewart**. Now, this question that Wiley suggested that you had participated in Bill Porter's death, was Mr. Porter a friend of yours?

Mr. **Holmes**. A very good friend of mine.

Mr. **Stewart**. You did——

Mr. **Holmes**. Bill Porter was—he was Bill Calmer's protege; he was up here. As a matter of fact, Trent Lott took his place right here in Washington. Trent Lott stayed in Bill Porter's house before Bill returned to Hattiesburg to practice law.

Mr. **Stewart**. Now, did——

Mr. **Holmes**. Trent Lott is the Congressman from my district.

Mr. **Stewart**. All right. Now, did Mr. Porter associate with you on certain cases?

Mr. **Holmes**. Sure.

Mr. **Stewart**. I mean, did you have a professional relationship.

Mr. **Holmes**. Bill would get me to—he'd always get me to help him with cases. Bill was a brilliant kind of boy, but he had no confidence in the courtroom. He'd associate me and split the fees with me.

Mr. **Stewart**. OK. Now, you testified at trial that you were real close to Mr. Porter?

Mr. **Holmes**. Right.

Mr. **Stewart**. OK. Did you participate in his death? I mean——

Mr. **Holmes**. Well, I invited him to go fishing.

Mr. **Stewart**. Yes.

Mr. **Holmes**. And the airplane crashed. Three of the four survived. There were two eyewitnesses that held a light for us to swim in. The Coast Guard came that night. They had full investigation of every kind, shape, form, and fashion of it.

They recovered the plane and Bill's body was in the plane. Now, if I'm going to kill somebody, I don't think I'm going to go out and have them crash with me in the darned back seat and swim in for an hour-and-a-half without a life preserver in front of five witnesses.

Mr. **Stewart**. And this was at night, as well, when the crash occurred?

Mr. **Holmes**. Sure. Well, it was right after dusk, dark.

Mr. **Stewart**. So you had nothing to do with that?

Mr. **Holmes**. Absolutely not. I was going to handle for Bill—I was getting out of office in January 1 of 1984. The crash happened on November 3rd of 1983, just a few—like six or eight weeks before I was to get out of office. Bill had a number of cases that he was waiting for me to get out of office to handle.

I handled those cases for his widow, did not charge a fee at all, and I'd say that the amount of money I'd have made by Bill living would probably have been, you know, $400,000 to $600,000.

Mr. **Stewart**. So you left that money for the estate or for his survivors?

Mr. **Holmes**. Certainly, I gave every dime to the estate; I didn't take a penny. But they let Wiley testify that there was $360,000 worth of life insurance on Bill Porter. There wasn't a dime, and they had that record right there.

I mean, if something like that takes place, you got a thousand investigators; run out there and get it and bring in and show the grand jury.

Mr. **Stewart**. All right.

Mr. Chairman, if this is a convenient time to break, it is a spot.

Mr. **Edwards**. Yes, it is, Mr. Stewart. There is a vote, and then we'll have to recess anyway until tomorrow morning in this room at nine o'clock.

Is that going to be convenient for you, Mr. Holmes?

Mr. **Holmes**. Your Honor—Mr. Chairman, whatever is convenient for this committee will be certainly convenient with me.

Mr. **Edwards**. We thank you.

Mr. **Holmes**. Thank you very much. That's more than courteous.

Mr. **Edwards**. The committee is recessed.

[Whereupon, at 3:48 p.m., the subcommittee was adjourned, to reconvene at 9:00 a.m., Friday, July 8, 1988.]

JUDGE WALTER L. NIXON, JR., IMPEACHMENT INQUIRY

FRIDAY, JULY 8, 1988

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met pursuant to call at 9:08 a.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards and Conyers.

Staff present: Catherine A. LeRoy, counsel; Alan I. Baron, special counsel; Pamela J. Naughton, assistant counsel; Peter Keith, assistant counsel; and Alan M. Slobodin, associate counsel.

Also present on behalf of Judge Nixon: David Stewart, Esq., Boyce Holleman, Esq., and Michael Holleman, Esq.

Mr. Edwards. Mr. Holmes, you are still under oath, as you probably already know.

The subcommittee will come to order.

I believe we are continuing the questioning by Counsel Stewart.

Mr. Stewart. Thank you, Mr. Chairman.

Good morning, Mr. Holmes.

I would like to ask you at the outset a little bit about your experience with Judge Nixon as a judge.

In your experience in the south of Mississippi, was he known as a corrupt judge, someone you could get to?

Mr. Holmes. Certainly not.

Mr. Stewart. In your experience, did you enjoy advantages or favors in your cases before Judge Nixon?

TESTIMONY OF PAUL HARDIN HOLMES

Mr. Holmes. No, sir, not inside the courtroom.

I—as I testified to before—regarded my friendship in that area, when I get down there, people naturally pick up business because of who your associations are. Just like if you were campaign manager, maybe for a Congressman, people have business before Congress, and they might hire you.

Naturally, you would have a better advantage or you get better treatment. I am sure that because of my friendship with him that I would be perceived as maybe having closeness with him.

That is true with any lawyer who is close with a judge or district attorney or anybody.

People always seek out who they think would have more influence in the court.

To answer your question pointedly, no, he never one time made a ruling on that bench, in my opinion, that gave me any advantage over anybody.

Mr. **Stewart**. You never knew him to do that for anybody?

Mr. **Holmes**. For anybody.

As a matter of fact, I used to think I would get unfair treatment because he had gone over board to prove our friendship didn't favor him.

Mr. **Stewart**. You made no effort to get your cases in front of Judge Nixon because you would get favorable treatment?

Mr. **Holmes**. No, sir.

There were times down there when there was a judge, the late Judge Cox, who would never go along with the Government's recommendations.

I know the Government on numerous occasions would try to get before one of the judges that would——

Mr. **Stewart**. The cases were assigned on a rotation basis?

Mr. **Holmes**. Yes, sir; they were assigned on a rotation basis.

Mr. **Stewart**. I want to ask you about some passages in Judge Nixon's trial testimony that Mr. Keith asked about yesterday.

The point of his question would appear to be that they might not correspond exactly to your testimony.

Let me ask you first about a matter which involved the trial transcript at page 1625. It concerned whether Judge Nixon asked you way back in 1979 or so what you knew about Wiley Fairchild.

Do you recall that?

Mr. **Holmes**. I remember——

Mr. **Stewart**. Just a yes-or-no answer.

Mr. **Holmes**. Yes.

Mr. **Stewart**. "Did Bud Holmes tell you you could never lose money with Wiley Fairchild?"

His answer was: "Never lose money with him, no."

Mr. **Holmes**. I never said that.

Mr. **Stewart**. That testimony is accurate?

Mr. **Holmes**. I never said, in my opinion, that you would never lose money.

Mr. **Stewart**. OK. See, that is what I wanted to get at.

Mr. **Holmes**. I am sure—well, to clarify the answer, I am sure I told him if Mr. Fairchild wants to put you in a deal, it would be very safe.

Mr. **Stewart**. Mr. Keith didn't read you another part of Judge Nixon's testimony where he was asked about this sort of thing.

I want to read this to you and see if it corresponds with your recollection.

Mr. **Holmes**. All right.

Mr. **Stewart**. It is at page 1480.

The question is—it will take a few questions to get into, "After that meeting, did you do anything or have occasion to talk to anyone to check out the name Wiley Fairchild?"

Answer: "Yes, I did."

Question: "Tell the jury what you did."

This is Judge Nixon testifying.

Answer: "I checked with a couple of people. I think Bud Holmes was one of them because I knew him quite well. He lived in Hattiesburg. I asked him what they knew about Wiley Fairchild, more particularly, his success in the oil business.

Question: "What were you told?"

Answer: "I was told he was very successful in the business and he was a businessman that made many charitable contributions. He was interested in politics and made contributions to quite a few candidates, and that his reputation as an oil and gas man was very good. His success rate was good."

There is no inconsistency with your testimony and Judge Nixon's testimony?

Mr. HOLMES. I don't disagree with that.

Mr. STEWART. If you, given all the information on that, that would have been your testimony yesterday?

Mr. HOLMES. That is in essence what I thought I testified to.

Mr. STEWART. Mr. Keith also asked you whether you recalled that phone call from your farm to Mr. Fairchild had occurred in 1982 or 1983.

Do you recall that?

Mr. HOLMES. I recall.

Mr. STEWART. And your testimony was you are positive at this point it was 1982.

Mr. HOLMES. No doubt in my mind.

Mr. STEWART. OK.

Now, you told the grand jury in February of 1985, however, that it was either in 1982 or 1983, you couldn't be sure.

Do you recall that?

Mr. HOLMES. I think. I remember reading that.

Mr. STEWART. That is at page 53.

Was that a truthful answer at that time?

Mr. HOLMES. Perhaps at that point I might not have gone back and actually clarified the reason that I remember. After establishing the date, I know good and well when the other incident occurred. I know what happened the night before. I know that was the night Judge Nixon——

Mr. STEWART. We went through that yesterday. You are confident now?

Mr. HOLMES. I am confident.

Mr. STEWART. In 1985 when you testified, you weren't sure whether it was 1982 or 1983.

Mr. HOLMES. At that time, I might not have had the information to verify which date.

Since I had the opportunity, I did verify.

Mr. STEWART. You testified at trial that you were pretty sure it was May of 1982, but you couldn't be positive.

Do you recall that?

Mr. HOLMES. If those are the words——

Mr. STEWART. that is not word for word, but that is the thrust of it. I would be happy to read you the testimony if you would like. It is at 876 and 877. The question is at the bottom of 876.

Question: "Is that the only date were are there together—" it is not a very elegant question. You are talking about the May 14 date.

Answer: "No, it could have been a different date than that. Let me say this. I have given what I think is the date. It could have been a different date."

That was your testimony.

Mr. HOLMES. I tell you right now——

Mr. STEWART. You have become more positive about it since then?

Mr. HOLMES. I know that if—you know, as a lawyer right now, I have been shown a copy of a marriage license. That is a copy. I don't know. It is not authenticated. I have not seen the person swear. That is the mayor's copy.

Mr. STEWART. OK.

Mr. HOLMES. Let me get it straight with you. I am basing mine on what I believe to be true.

Mr. STEWART. I understand that.

Mr. HOLMES. And I believe—just like I believe my children are mine, and my wife knows—I believe the date that I testified is that date.

Possibly my children aren't mine. Possibly that is not the date. It possibly could have been another date as a lawyer.

Mr. STEWART. Let me ask a separate question.

Mr. HOLMES. I testified as honestly as I know how that was the date, and I verified and I have given times, dates and places. At the time it was immaterial what day it was.

Mr. STEWART. Let me ask a more general question.

When Mr. Weingarten was here last month, he testified at one point that it is entirely possible for two people to have a different memory of the same event. It doesn't mean either of them is lying.

Do you agree with that?

Mr. HOLMES. People have different remembrances.

Judge Nixon and I have different versions of what was said during that relationship.

You know, if Judge Nixon says he believes it was 1983, I am not going to say he is lying about believing that.

Mr. STEWART. I understand that.

Mr. HOLMES. I don't think he would deny going——

Mr. STEWART. Let me ask you about a new subject now. Let's get into Drew Fairchild's case.

As State prosecutor, you have what is known as concurrent jurisdiction. But your office had no involvement in the original bust and the original prosecutions?

Mr. HOLMES. None whatsoever.

Mr. STEWART. Now, in the summer of 1981, you have testified you were planning to present that situation to the grand jury in Hattiesburg for informational purposes?

Mr. HOLMES. Not to ask for indictments, just to say here is what it was.

Mr. STEWART. At that point, Bill Porter complained about not being paid for his representation with Fairchild?

Mr. HOLMES. No, sir. I asked Bill what happened in the case. Bill said he didn't know himself. That after he made the deal up in Jackson and he turned him over to the Feds, he never heard any more about it. He doesn't know what happened.

As a matter of fact, I didn't even get paid. And I am sure I started picking at him about it.

He was fussing, you know.

Mr. **Stewart**. Let's see if we can find common grounds here. You are having a conversation with Bill Porter. The subject comes up he has not been paid by Bill Fairchild, and he is fussing about it?

Mr. **Holmes**. Right.

Mr. **Stewart**. Then you call the U.S. Attorney, George Phillips, and you mentioned to Mr. Phillips about Bill Porter's problem with not being paid, didn't you?

Mr. **Holmes**. It came up in conversation, laughing, you know.

Mr. **Stewart**. And you also explained that you would just as soon handle Drew's case in Hattiesburg?

Mr. **Holmes**. He said the guy cooperated. If you wanted to go ahead and present it for indictment, it is fine with us.

Mr. **Stewart**. Yesterday you testified that you did not indict Drew Fairchild in order to help Bill Porter collect his fees.

Do you recall that?

Mr. **Holmes**. No, sir. That was not remotely any cause for doing.

Mr. **Stewart**. Let me read you the testimony at trial, page 843, 844.

Question: "In any event, were you doing something to help Bill? That is what was really the motivating factor in calling George Phillips?"

Answer: "I would say that was primarily the motivating cause."

Question: "It was primarily to help Bill collect his money?"

Answer: "Well, I couldn't necessarily put it in degrees. That was a certain strong motivating thing."

Question: "Primarily to help him collect his money?"

Answer: "Call it that."

Question: "I am calling it because I got the best source in the world."

Answer: "Yes."

Question: "You and the grand jury?"

Answer: "Correct."

Question: "Right?"

Answer: "Right. That is right."

Question: "You are telling us that is your primary motive?"

Answer: "That is right."

Mr. **Holmes**. That is exactly what I stated. That is my testimony.

Mr. **Stewart**. OK. No point in arguing about it.

Then there is a passage at 845 and 846.

Question: "And you were doing it primarily to help your buddy, Bill?"

Answer: "I would say that was a primary motive when I called.

Question: "Would you think it is a fair statement, Mr. Holmes, to think that sort of a misuse of the system?"

Answer: "I would say it was, yes."

Mr. **Holmes**. I don't argue with that.

Mr. **Stewart**. OK.

Question: "Yes, I mean I don't want—you got enough—in all seriousness, Bud, it is a problem. That is a corruption of that system. Everybody expects you to be doing things in an even-handed manner. Actually, at least with this friend you are doing him a favor. You are going to get in effect to have his own client to be indicted; correct?"

Answer: "No, sir. I was going to present the case anyway. It happened to be working out that way."

Question: "In hindsight, you would view that conduct as disgraceful, right?"

Answer: "Yes, sir. It happens all the time, but I guess it would be."

Mr. HOLMES. I mean, I didn't seem to be arguing about the thing. You know, trying to take what was a very small incidental thing and try to blow it up to try to get away from what the whole investigation was about.

Mr. STEWART. OK. Let's keep moving here.

After Mr. Fairchild was indicted, you then persuaded him, and you have described the means, to plead guilty in January of 1982?

Mr. HOLMES. I did.

Mr. STEWART. OK.

And he had the same basic deal with the Federal Government, with you, that he had with the Federal Government?

Mr. HOLMES. That is correct.

Mr. STEWART. All right. Then you are holding off sentencing Drew because you want him to testify against Mr. Watkins before you sentenced him?

Mr. HOLMES. That is correct.

Mr. STEWART. And you were feeling real strongly about that because you have had a witness go South on you when you sentenced him beforehand?

Mr. HOLMES. Yes.

Mr. STEWART. OK.

I want to talk for a second about the phone call and that situation with Judge Nixon at the farm.

On that occasion, you recall Carroll Ingram and Judge Nixon coming to your office towards the end of the day.

Is that fair?

Mr. HOLMES. I would say that is a fair statement.

Mr. STEWART. OK, and if Carroll Ingram has no recollection of ever coming to your office with Judge Nixon, then his recollection is just different from yours?

Mr. HOLMES. It would be different.

Mr. STEWART. OK.

You have no reason to think he is intentionally making an inaccurate statement?

Mr. HOLMES. He would be making an inaccurate statement that he never came by my office with Judge Nixon. Whether or not he came on that exact——

Mr. STEWART. That wasn't my question.

Mr. HOLMES. I understand the question.

Mr. STEWART. Could you answer my question?

Mr. HOLMES. My best recollection is he came by, and my records so indicate he came by on that day.

Mr. STEWART. Do you have any reason to think he would intentionally make a false statement?

Mr. HOLMES. No. I think if Carroll Ingram says he will tell he truth, he will tell the truth.

Mr. STEWART. You testified at trial that on that occasion, Judge Nixon might have been coming by to borrow Hank Williams records, but you couldn't recall for sure? You know he came by on some occasion to borrow Hank Williams records?

Mr. HOLMES. Some occasion he did because he borrowed them.

Mr. STEWART. You don't remember whether it was this night or another night?

Mr. HOLMES. In my opinion, it was not that time.

Mr. STEWART. At trial, you said it could have been on that occasion.

Mr. HOLMES. It could have been; sure.

Mr. STEWART. As you recall that evening, did your conversation with Judge Nixon cover subjects other than Drew with Wiley Fairchild?

Mr. HOLMES. I have no recollection of it, no.

Mr. STEWART. You don't recall?

Was that the only thing you talked about, or was there lots of other things you talked about?

Mr. HOLMES. I have, you know—I would think it would be ludicrous to say we didn't open our mouths. We just made that two-or-three-minute exchange about that one subject and didn't open our mouths again. I think it would be ludicrous to say that.

But, I don't recall——

Mr. STEWART. You don't recall specifics?

Mr. HOLMES. No.

Mr. STEWART. This wasn't the only topic of conversation that day?

Mr. HOLMES. Well, it was the only thing that I had any occasion to remember, because after I talked to Carroll, it refreshed my memory very strongly that we had this conversation.

Mr. STEWART. Which conversation with Carroll?

Mr. HOLMES. This was a few days after he told me that Wiley was on cloud nine, I believe, or words to that effect.

Mr. STEWART. If Mr. Ingram has no recollection to that conversation, his recollection is just different from yours; isn't it?

Mr. HOLMES. That is correct.

Mr. STEWART. Now, Judge Nixon asked you to explain all about the Fairchild conversation?

Mr. HOLMES. He did not. I testified he said he didn't want to know about it. I am sure knowing me and my nature I started trying to explain it, and he said he didn't want to know about it.

Mr. STEWART. Let me ask you to look at Exhibit N-26. It is in the book of our exhibits. It has the shield on front.

Mr. Keith asked you some questions about this yesterday. I would ask you to look at the third page.

Is that your signature at the end?

Mr. HOLMES. That is mine.

Mr. STEWART. And this is the declaration you signed about four months ago.

Do you recall that?

Mr. HOLMES. That is the date.

Mr. STEWART. The date appears to be February 29, 1988.

Mr. HOLMES. Whatever date it was.

Mr. STEWART. All right.

I want to—Mr. Keith asked you some questions about paragraph 3. I want to ask about paragraph 2. It is on the first page.

The statement is made there, "Nixon made absolutely clear to me that he was not seeking any preferential treatment or special favors for Drew Fairchild."

That was true?

Mr. HOLMES. That is true.

Mr. STEWART. OK.

"I understood Nixon was passing on to me the information that Wiley Fairchild had been asking about his son's case."

Is that true.

Mr. HOLMES. That is correct.

Mr. STEWART. "I would have expected any friend of mine to mention to me that a member of the community had been asking about a case for which I was responsible."

Is that true?

Mr. HOLMES. That is true; nothing out of the ordinary.

Mr. STEWART. Let me try to summarize that if I can.

Are you saying there it was your understanding that you did not understand Judge Nixon was trying to attempt to influence you in handling Drew Fairchild's case?

Mr. HOLMES. As a lawyer, you never know what is in a person's mind. He did not say one thing to me that would have influenced or attempted to influence me.

It was just a matter of a question for the jury to decide, as he mentioned, in fact, that it was his intention to question the people that come up. But he verbally said he was not trying to

Mr. STEWART. I am just asking you, your understanding was he was not trying to influence you.

Is that right?

Mr. HOLMES. He was not trying to get me to do one thing.

Mr. STEWART. All right.

And I think you testified about this consistently, including at trial, when you told Wiley Fairchild that "Whatever that man asked me to do, I would just do it."

That was something you volunteered on your——

Mr. HOLMES. I would do that any time.

I mean, any time any preacher or any layman or anything like that, we all try to give anybody credit. What difference does it make?

Mr. STEWART. OK

Let me see.

At trial, I believe what you said was, "I am real embarrassed about that, et cetera."

This is at page 740.

"I take full blame here because Judge Nixon did not ask me to say or do this, but I said I want to let you know that I want Judge Nixon to have credit for helping the boy."

Mr. HOLMES. Judge Nixon did not ask me to say that. I did.

Mr. STEWART. OK.

As you recall the conversation, you were the one who came up with the idea of passing the case to the files? Judge Nixon didn't suggest it?

Mr. HOLMES. Judge Nixon didn't suggest it.

Mr. **Stewart**. It just came out, just occurred to you on the spot?

Mr. **Holmes**. It sounded like a good thing at the time.

Mr. **Stewart**. OK.

And if it is your recollection, it has been your testimony, I guess, that you told Wiley Fairchild on the phone that you would do that?

Mr. **Holmes**. I did.

Mr. **Stewart**. OK.

And if Mr. Fairchild has no recollection of that, then his recollection is just different from yours?

Mr. **Holmes**. If I had known he didn't remember it, then I probably never would have done it.

Mr. **Stewart**. Then you wouldn't have gotten credit for it.

Mr. **Holmes**. No, then I wouldn't be here today.

Mr. **Stewart**. During this conversation, was Walter Nixon talking to you as a Federal judge or just as a friend?

Mr. **Holmes**. I think that is—I will answer the question certainly as a friend.

Mr. **Stewart**. Do you recall what time of night that conversation took place?

Mr. **Holmes**. I would say in the 7:00 to 7:30 range; 8:00 o'clock, possibly.

Mr. **Stewart**. Now, I believe you testified at trial that between this May date when you recall having this conversation and December of 1982, when the case was passed to the files, did you never again talk to Judge Nixon about Drew Fairchild in that seven-month period?

Does that sound right?

Mr. **Holmes**. I don't recall. No.

Mr. **Stewart**. You don't recall talking to him during that period about Drew Fairchild?

Mr. **Holmes**. Between that time and—offhand, I don't recall, no.

Mr. **Stewart**. At page 945, there is a question.

Question: "Then we're, you end of the day, someplace around May 14, 7:00 o'clock May 14, you don't pass it to the files until December 23rd?"

Answer: "Uh-huh, yes."

Question: "Did you see the judge in between?"

Answer: "I am sure I saw him."

Question: "You know you do. Your client even talked about it."

Answer: "But I didn't discuss it with him."

You had no further conversation with him?

Mr. **Holmes**. I don't recall.

I mean, whenever I would see him, from time to time, I don't recall ever talking to him.

There is a possibility after the thing got in the paper—we kid with each other all the time—he could have kidded me about it.

There was no meaningful discussion. I do not recall talking to him.

Mr. **Stewart**. And you didn't recall it at trial?

Mr. **Holmes**. That is right. That is what I said.

Mr. **Stewart**. The publicity started after the case was passed to the files?

Mr. **Holmes**. That is right.

Mr. **Stewart**. All right.

Now, when the case was passed to the files, you didn't call up Judge Nixon and say, "Hey, Judge, I came through for you. I passed it to the files?"

Mr. HOLMES. I never testified to that.

Mr. STEWART. You did give a copy of the order to Carroll Ingram to give to Wiley Fairchild.

Mr. HOLMES. That is correct, on Christmas Day at his house.

Mr. STEWART. Now, I want to talk for a second about the seven-month period that passed there.

You waited those seven months because you were hoping that Mr. Watkins, that fugitive pilot, would come back?

You testified to this yesterday again actually.

Isn't it fair to say that what you were hoping was that he would come back, be tried, and you could get Drew sentenced and you would never have to pass the case to the files?

Mr. HOLMES. That is correct.

Mr. STEWART. You didn't want to pass the case to the files?

Mr HOLMES. No.

I mean, I—he already plead guilty. He was already a convicted felon. It was just a matter of the rest of the paperwork, going up there sentencing him, paying a fine, and going on about his business.

Mr. STEWART. If Mr. Watkins had been returned and Drew would have been able to testify, you never would have passed the case to the files?

Mr. HOLMES. That is correct.

Mr. STEWART. After May of 1982, after this telephone call, it was still your intention if Watkins was returned and he can testify, Drew can testify, you are going to sentence Drew and you are not going to pass the case to the files?

Mr. HOLMES. That is correct.

The truth of the matter is, I doubt if anybody even thought much of it.

Mr. STEWART. But that was your testimony at trial and your testimony here today.

Mr. HOLMES. Right.

Mr. STEWART. OK.

Now, you were trying real hard during this time period to get Mr. Watkins returned, weren't you?

Mr. HOLMES. The record indicates that, right.

Mr. STEWART. You were working with the FBI to get him returned?

Mr. HOLMES. I have a file full of letters to the FBI and anybody trying to locate him.

There is still an outstanding warrant for his arrest.

Mr. STEWART. This is eight years later, and he is still at large?

Mr. HOLMES. That is right.

Mr. STEWART. But you were trying real hard to get him? It is not a case where you were sitting on your hands letting that guy sashay around the country?

Mr. HOLMES. No. I got letters to the FBI, to every law enforcement agency in the world trying to bring him in.

Mr. STEWART. Then in December of 1982, something happened that causes you to pass the case to the files?

Mr. **Holmes**. Right.

Mr. **Stewart**. Isn't what happened that Bill Porter comes to see you?

Mr. **Holmes**. The—Bill, for some time during that period of time, was fussing about having to continue the case for so much and things like that.

Plus Jack Weldy was leaving office, Dickey McKenzie was coming in. Bill supported Jack Weldy. Bill was afraid to leave his client there naked.

Mr. **Stewart**. I want to ask you about this.

One of the things that puzzled me about this episode, when you pass the case to the files, Bill Porter's name came up. You never mentioned Bill Porter in your decision to pass the case to the files.

Mr. **Holmes**. It was not. He had not filed any motions. There was nothing, pending motions or things of that nature. It would have been in that type of practice down there, different from your large city practice.

Mr. **Stewart**. Of course. But Bill Porter talking to you about passing the case to the files was a significant factor in your decision to do so in December of 1982?

Mr. **Holmes**. I can't say it was, "a"—you want to get into degree—"a significant factor," but it was certainly one of the factors, sure.

He was concerned about the new judge coming in as well.

Mr. **Stewart**. Would it be accurate to leave the subcommittee with the impression that Bill Porter played no role?

Mr. **Holmes**. No, that would not be accurate.

Bill Porter—I guess aggravation about having to keep continuing the case certainly played a role in it.

Mr. **Stewart**. Of course.

Let me ask you about a statement that was taken down by the FBI on April 25 of 1984.

Do you recall being interviewed by the FBI, a document that is signed by a Special Agent Donald Lawless?

Mr. **Holmes**. Right.

Mr. **Stewart**. Let me read you this passage about passing the case to the files.

"Holmes advised on approximately December of 1982 Watkins was still in fugitive status. Therefore, Fairchild had not yet been sentenced pending his testimony against him. Holmes advised about this time Bill Porter came to see him saying he wanted Holmes to dismiss the cases against Fairchild, which Holmes stated he refused to do."

Is that accurate?

Mr. **Holmes**. If I said it, I would think so.

Mr. **Stewart**. Well, from your current recollection, is that accurate?

Mr. **Holmes**. I really don't recall those exact—I mean using the words. Apparently that is Lawless' synopsis of what was said.

Mr. **Stewart**. You said he was a good agent.

Mr. **Holmes**. He is a good agent. It is accurate.

Mr. **Stewart**. "Holmes further advised Porter told him he did not trust McKenzie, the individual who had been elected as the new circuit judge in Forrest County, and as a result was going to file a writ of habeus corpus relative to a speedy trial for his client, Drew Fairchild.

"As a result, Holmes advised he decided to pass the Fairchild case to the file knowing it would be reopened in three years and would simply place the case in a holding status."

Is that accurate?

Mr. **Holmes**. That is accurate, sir.

Mr. **Stewart**. You never mentioned in there the phone call from the farm, and you never mentioned Wiley Fairchild, did you?

Mr. **Holmes**. No.

Mr. **Stewart**. I want to ask about the sentencing memorandum just quickly.

You were represented in, you had a couple of attorneys, but one of your attorneys was a fellow named Pat Fanning from New Orlens?

Mr. **Holmes**. From New Orleans.

Mr. **Stewart**. Is he a good lawyer?

Mr. **Holmes**. Yes.

Mr. **Stewart**. I am just asking it because the last witness put some distance between himself and his lawyers. I wanted to make sure you didn't feel that way.

Did you work closely with Mr. Fanning in preparing for trial?

Mr. **Holmes**. Yes.

Mr. **Stewart**. Did you brief him fully on the facts of your understanding and recollections?

Mr. **Holmes**. I am sure I did.

Mr. **Stewart**. Does he still represent you on occasion?

Mr. **Holmes**. Yes.

Mr. **Stewart**. He wrote a sentencing memorandum on your behalf after the plea deal was set. I wanted to read a passage from it. It is on the third page. Just a quote here.

"From Mr. Holmes' standpoint, there was no reason whatsoever to deny the phone call. He had done nothing illegal."

Here is the passage I am interested in.

"And the Drew Fairchild case had been handled in exactly the same fashion as it would have been had the phone call never occurred."

Mr. **Holmes**. That is a fair statement.

Mr. **Stewart**. That is accurate?

Mr. **Holmes**. That is a fair statement.

Mr. **Stewart**. OK.

So if that phone call never occurred, you never had a conversation with Judge Nixon, Drew Fairchild's case would have been handled the same way?

Mr. **Holmes**. If I never had the conversation with Judge Nixon. You know, restate——

Mr. **Stewart**. Is a phone call different than a conversation with Judge Nixon? They happened together.

Mr. **Holmes**. Restate your question.

Mr. **Stewart**. My question was about the phone call. If the phone call and the conversation with Judge Nixon had never occurred, your handling of the case of Drew Fairchild would have been no different.

That is what Mr. Fanning is saying here.

Mr. HOLMES. I understand it.

No, that is not an accurate statement.

Mr. STEWART. Mr. Fanning told your sentencing court something that was false?

Mr. HOLMES. I never paid any attention to it, to be frank. The sentencing and the passing of the file in the Drew Fairchild case has no direct bearing one way or another from the actual legal point of view as to what happened to the ultimate disposition of Drew Fairchild.

Mr. STEWART. I have got to ask this question now.

Mr. HOLMES. OK.

Mr. STEWART. You say you didn't pay any attention. Your attorney is telling a sentencing judge something that isn't true.

Doesn't that bother you?

Mr. HOLMES. You are getting into an area right there where you want to take and relook at each little thing on such a microscope and redo it just like in this statement you prepared.

Mr. STEWART. Mr. Holmes, I am looking at one thing, and it is not a little thing. I am looking at why you passed the case to the files.

Yes, sir, I am looking at that real carefully. I am not crawling over you about the dates, and I am not crawling over you about who drove and who said what first and who is wearing a plaid coat. But I am real interested in this question.

Mr. HOLMES. Then my testimony today is the same as it has always been. Had I not had that conversation with Judge Nixon and had I not had that conversation with Wiley Fairchild, then I would not have passed the case to the file.

Mr. STEWART. Mr. Fanning's statement here on your behalf to your sentencing judge was false?

Mr. HOLMES. That is an inaccurate statement; that is correct.

Mr. STEWART. Do you recall giving a deposition on March 4 of 1987 in Hattiesburg in an employment discrimination case that involved the Forrest County District Attorney's office?

Mr. HOLMES. I am sure I did.

Mr. STEWART. You were under oath during that deposition?

Mr. HOLMES. Right.

Mr. STEWART. Just like you are here?

Mr. HOLMES. Right.

Mr. STEWART. There was a man named Dennis Horn asking the questions?

Mr. HOLMES. Right.

Mr. STEWART. He is a lawyer in Mississippi?

Mr. HOLMES. Uh-huh.

Mr. STEWART. The question of Drew Fairchild's case came up in that deposition about passing the case to the files.

Do you recall that?

Mr. HOLMES. I don't recall that, but if you say it is——

Mr. STEWART. Let me read to you from page 13, Mr. Horn asking the questions.

You are a defendant in that lawsuit, aren't you?

Mr. HOLMES. Right.

Mr. STEWART. Question: "Now, sometime thereafter an order was entered, I think, remanding the case to the file or something of that nature."

Answer: "Passing to the file."

Question: "Passing to the file?"

Answer: "Yes."

Question: "An order passing the case to the file does what? I used to be an assistant district attorney."

Answer: "Absolutely; moves off active docket to inactive docket. It stops the 270-day rule from running."

Question: "It does stop the 270-day rule from running?"

Answer: "Yes. Both people got, as long as the defendant agrees to it, everybody is in agreement, they can go ahead and still demand the trial. But the 270-day rule was abrogated as long as it was in the active file."

Question: "The 270-day rule wouldn't apply to Drew if he has already plead guilty, would it?"

Answer: "That would be correct. That would be regarding a plea. The only reason that I am saying—"

Here is the passage I want to highlight: "The reason it is passed to the files about a year later was because Bill Porter was screaming, was fussing about it, you know, about that it was up in the air and everything. I said, 'Bill, just go ahead and do it.'"

Mr. HOLMES. That is correct.

Mr. STEWART. Is that true?

Mr. HOLMES. Right.

Mr. STEWART. Well, what you said there was the reason this passed to the files; you didn't mention the phone call from the farm.

Mr. HOLMES. There were a number of reasons on it. Bill Porter was fussing about it. I made a promise I was going to do it. It was all a combination. I didn't say that is the only reason.

Mr. STEWART. Well, the testimony doesn't offer any other reasons.

Mr. HOLMES. Well, of course, you can interpret it any way you want to, but that was not the only reason.

Mr. STEWART. All right. At least we are up to the point where it was a reason.

Mr. HOLMES. It was a reason.

Mr. STEWART. OK.

Was it a significant reason?

Mr. HOLMES. Sure, it was a significant reason.

Mr. STEWART. All right.

And the fact that you didn't mention any other reasons in this deposition, is that significant?

Mr. HOLMES. They probably didn't even—I didn't see any real relevancy in it. It is just something that I answered that way. I didn't see any point in going into a long dissertation also about this, also about that. It is just the way I answered it.

Mr. STEWART. I want to look again at your declaration, Exhibit N-26 in front of you there, paragraph 3 again. This is what Mr. Keith asked you about yesterday, and you said that was not accurate.

Do you recall that?

Mr. HOLMES. I recall it.

Mr. STEWART. Let em read this to you. It says, "I was not influenced in any way in my handling of the Drew Fairchild matter by this brief exchange with Nixon. My action took no action nor failed to take any action with respect to the Drew Fairchild matter because of that brief exchange I had with Nixon."

That is pretty much what Mr. Fanning told the court in the sentencing memorandum, isn't it?

Mr. HOLMES. I don't know—if what you are saying is what he said, what you just read, what I am testifying today that the fact the phone calls made, the promise had some influence. Whether or not that was one inch or one mile, but it had influence on me. And that is an inaccurate statement.

I think I maintained that all the way through.

Mr. STEWART. All right.

You remember how this declaration was prepared. I think yesterday you said you glanced at it before you signed it.

Mr. HOLMES. That is right. I did not read it in detail or take it apart.

Being an attorney, you look at everything like an attorney. If you start reading it like an attorney, you start at the very beginning and you go through, you never could cover anything.

Some people look and say that is the gist of everything; sure.

Mr. STEWART. Mr. Holmes, you said you met in Gulfport before this was prepared, and you met with me; is that right?

Mr. HOLMES. That is correct.

Mr. STEWART. You were accompanied by your counsel, Maurice Dantin.

Mr. HOLMES. That is correct.

Mr. STEWART. He is a long-time friend of yours?

Mr. HOLMES. Yes.

Mr. STEWART. Is he a man in whom you place a lot of trust?

Mr. HOLMES. Yes.

Mr. STEWART. He is an able counsel?

Mr. HOLMES. Very.

Mr. STEWART. He still represents you, too?

Mr. HOLMES. Yes.

Mr. STEWART. Mr. Michael Holleman, this gentleman closest to you, was there?

Mr. HOLMES. Right.

Mr. STEWART. Mr. Boyce Holleman was there also?

Mr. HOLMES. He was there one time. One time he wasn't there.

Mr. STEWART. There were five of us there in the room, and we are talking about things related to this case; correct?

Mr. HOLMES. That is correct.

Mr. STEWART. And Judge Nixon is going to prison in a couple of weeks.

Do you recall that?

Mr. HOLMES. If you say that. I wouldn't say I recall that. It seemed like he was in prison, and he was out one time. Perhaps he was.

Mr. STEWART. You understood it was an important conversation, it was a serious matter, didn't you?

Mr. HOLMES. Yes.

Mr. STEWART. It wasn't a casual conversation?

Mr. HOLMES. No, it was an in-depth conversation. I tried to be as far as I was with the Government.

Mr. STEWART. You met with the congressional counsel as well?

Mr. HOLMES. I met with the congressional counsel and tried to be as cooperative——

Mr. STEWART. We all took notes while we were there talking to you?

Mr. HOLMES. That is correct.

Let me make this observation. Your remembrance of our conversation and everything, you know, we are differing on things. They differ with things they were saying down there.

People have a purpose. Any time you interpreted different statements that were made in reading and when it was pointed out to me in this one, then I said, "No, it is not accurate."

Mr. STEWART. Mr. Holmes, I would appreciate it if you let me trudge along at my own speed. Sometimes I am a little slow in things.

Mr. HOLMES. Certainly.

Mr. STEWART. At the end of that meeting, we talked about you would be willing to provide a statement that might help Judge Nixon in his post conviction. You were gracious enough to say if it was an accurate statement, you would be willing to.

Do you recall that?

Mr. HOLMES. Yes.

Mr. STEWART. Do you recall I called you up by telephone and read you the statement that was drafted based on your comments, and Mr. Dantin was on the line as well?

Mr. HOLMES. I remember that, yes.

Mr. STEWART. And I read you the whole thing and said, "Mr. Holmes, please be sure that is accurate because I don't want anything in that that isn't accurate."

Do you recall that?

Mr. HOLMES. You all were careful to say, "I always want the truth."

Mr. STEWART. You affirmed to me that was accurate?

Mr. HOLMES. That was accurate.

Mr. STEWART. Then I shipped it off to Mr. Dantin's law office. I checked my records. I assume Mr. Dantin gave it to you.

Do you recall him giving it to you?

Mr. HOLMES. I believe he mailed it to me, handed it to me.

Mr. STEWART. Did Mr. Dantin say to you, "Here, Bud. Here is something you should sign without reading it"?

Mr. HOLMES. No, he just said, "Here is the statement."

Mr. STEWART. When you were a practicing lawyer, did you tell your clients to sign things without reading them?

Mr. HOLMES. I am sure I did plenty of times.

Mr. STEWART. You told your clients to "Go ahead, it doesn't matter. Go ahead, don't worry about it"?

Did you view this as a casual matter?

Mr. HOLMES. No. I read the statement.

Mr. STEWART. You did read the statement?

Mr. HOLMES. Sure.

Mr. STEWART. You thought it was accurate?

Mr. Holmes. I read over it one time. I said, "This is the gist of my conversation." It is still the gist of it.

Mr. Stewart. All right.

The last statement there in the declaration states, "I declare under penalty of perjury—"

Mr. Holmes. That is correct.

Mr. Stewart. Given your experience with the law, you take this, you have to take that all very seriously, don't you?

Mr. Holmes. Let me tell you right now, you know, what happens when you prepare something. The only way to do it, we would have been three weeks trying to draft something.

The thing would have looked like the Library of Congress by the time we got through trying to put every period and everything in such a complete pocket to cover every little possible contingency in the thing.

This, as I gathered it, was nothing but a general gist of what our conversation was. And it is still that.

I am just saying that paragraph 3 should have been an addition to it in there or a deletion in there.

Mr. Stewart. All right.

Mr. Holmes. I am remiss at not doing that. I should have underlined, struck out, and added my own.

Mr. Stewart. What I am uncertain about here is you were given the opportunity to do that.

Mr. Holmes. And I didn't do it. I was remiss in not adding it.

The next time you get something from me, it will be edited. I promise you that.

Mr. Stewart. In addition, the way this thing comes out here is consistent with what Mr. Fanning says to your sentencing court. It is consistent with what you told the FBI, and it is consistent with what you told the deposition in 1987.

Mr. Holmes. But it is not consistent with what I testified to in court, nor consistent with what I testified today and what I am testifying to right now.

Mr. Stewart. What is bothering me is it seems like your version on this changes every time Judge Nixon is on the horizon.

When he is around, all of a sudden he is the guy who did it. When he is not around, he is nowhere to be found.

Mr. Holmes. I am the one that did it. Read the thing. You are trying to make a mountain out of a molehill.

I said I was not influenced in any way in the handling of Drew Fairchild with the brief exchange with Mr. Nixon, nor failed to take any action with respect to Mr. Fairchild because of the brief exchange I had with Nixon.

I testified to it before and I am testifying right now that that conversation I had with Wiley Fairchild that night on the phone was an influencing factor, an influencing factor—was not the influencing factor; was an influencing factor with me to get me to pass the thing to file.

For me to state anything different would not be an accurate statement.

Mr. Stewart. Let me see if I can come around this in another direction.

Mr. HOLMES. Judge Nixon did not ask me to pass to the trial. That is what I read into it, that Judge Nixon did not ask me to pass it into it.

In reading it in retrospect, sure, that is an ~~in~~accurate statement.

Mr. STEWART. Let me ask from another direction.

If Bill Porter never talked to you about his concerns about Judge McKenzie and his concerns about Judge Weldy leaving office, it is true, isn't it, that you would not have passed the case to the file then?

Mr. HOLMES. There again, you look back over something that you don't really put a ton of concern over, and you look back and try to reconstruct it two or three years later to say what my mental state of mind was. It was a combination of things. It was a combination of things.

I took it to Carroll Ingram because I wanted Carroll to get credit. Bill Porter took credit from Drew.

What difference did it make?

Mr. STEWART. If Porter hadn't come to you, you said you would have preferred simply to leave Drew hanging fire so you could resentence him, sentence him after Watkins' return. You have been waiting seven months. There wasn't any reason not to wait another month, was there, except for Bill Porter showing up?

Mr. HOLMES. Well, that is—I would say that is accurate. The thing about it, Don Lawless, when you asked me about him, that was taken after I talked to Judge Nixon. He told me about three or four times.

I told him I never talked to anybody. I never talked to anybody. That was after he told that to me. That is the reason the thing wasn't mentioned and the phone call wasn't mentioned.

Mr. STEWART. Were you lying to the FBI?

Mr. HOLMES. Sure.

Mr. STEWART. In 1987, the trial is over, Judge Nixon has been sentenced, you were given a civil deposition and you don't mention the phone call again.

Mr. HOLMES. It didn't come up. It wasn't part of the answer.

Mr. STEWART. That is right. It wasn't part of the answer.

Mr. HOLMES. Wasn't part of the answer.

Mr. STEWART. You weren't concealing it to protect Judge Nixon?

Mr. HOLMES. Not at that point. Nothing to conceal.

It was a casual, lengthy, lengthy deposition. It is the answer I gave.

If he had enlarged on it, certainly I would have answered.

Mr. STEWART. As district attorney, could you have passed the case to the files yourself?

Mr. HOLMES. Sure.

I had to get the judge to sign the order.

Mr. STEWART. You needed a court order?

Mr. HOLMES. Court order.

Mr. STEWART. And you recommended it in motion?

Mr. HOLMES. That is correct.

Mr. STEWART. All right.

Now, that motion is Exhibit 18.

Mr. HOLMES. OK.

Mr. STEWART. I just wanted to ask you if the statements in this motion are accurate.

You can either—let me review them quickly. You talk about the co-defendant who, I take it, is Watkins. He has been a fugitive from justice and apprehended in Florida. You have been unable to get him back to Mississippi. The State would further show the co-defendant was a pilot who was actually flying the aircraft.

Drew Fairchild agreed to cooperate with the State of Mississippi.

Mr. HOLMES. Wait. I don't have it. I want to see which one you are talking about.

Mr. STEWART. I am sorry.

Do you have that, Mr. Holmes.

Mr. HOLMES. Right.

Mr. STEWART. OK.

The State would show that the co-defendant was the pilot who was actually flying the aircraft and that Drew Fairchild agreed to cooperate with the State of Mississippi. Further, the State of Mississippi has been made aware that he has cooperated with the Mississippi Bureau of Narcotics and supposedly the Federal Government concerning this investigation and was not indicted by the Federal Government for his role, although all other parties besides Drew Fairchild or the pilot were indicted by the Federal Government.

Was that accurate with you, the statements made there?

Mr. HOLMES. Right.

Mr. STEWART. Do you think it was a proper order for Judge Weldy to sign?

Mr. HOLMES. Certainly.

Mr. STEWART. Yesterday you testified that passing the case to the files was "tantamount to dismissal." That is the phrase I wrote in my notes.

I wanted to ask you about that because in your first grand jury, you testified, first appearance in July, and it is at page 42, you were asked about that. You said, "It means nothing to pass the case to the files."

Mr. HOLMES. That is right.

Mr. STEWART. Is it tantamount to dismissal or does it mean nothing?

Mr. HOLMES. Once you pass the case to the files, I don't know the accurate figure on things, but I would say about 90 percent of the time, they never recall it.

Mr. STEWART. I am not sure you answered my question. Maybe it was not clear.

[10:00 A.M.]

Mr. STEWART. Mr. Holmes, I am not sure you are answering my question. Maybe it wasn't clear.

Mr. HOLMES. Physically or legally it does not stop or bar or come res judicata on anything.

Mr. STEWART. That is what you meant when you said it means nothing?

Mr. HOLMES. It means nothing. You can bring it back, put it on the inactive file.

Mr. STEWART. If Mr. Watkins had come back, you were going to bring the case back up?

Mr. HOLMES. I did bring it up.

Mr. STEWART. When his extradition was imminent, you brought the case right back?

Mr. HOLMES. That's correct. Apprehended, brought him to Forrest County. I did it.

Mr. STEWART. OK. Now you testified that when Drew Fairchild was indicted, you did not call Wiley and tell him Drew had just been indicted.

Mr. HOLMES. I did not.

Mr. STEWART. If Wiley Fairchild remembers that you did that, his recollection is incorrect?

Mr. HOLMES. It's inaccurate.

Mr. STEWART. If you did not—I am sorry. You testified you did not mention to Wiley that he might consider hiring Bill Porter?

Mr. HOLMES. I did not.

Mr. STEWART. And if his recollection is different——

Mr. HOLMES. Mine is different.

Mr. STEWART. —yours is different?

Mr. HOLMES. Yes.

Mr. STEWART. OK. Is your recollection that you told Wiley during the phone call from the farm that you were going to pass—that you passed the case to the files?

Mr. HOLMES. That's my recollection, yes.

Mr. STEWART. And you also recall Judge Nixon saying to Wiley in that phone call he sure appreciated the opportunity to participate in these investments?

Mr. HOLMES. Words to that effect.

Mr. STEWART. And if Mr. Fairchild doesn't remember either statement being made to him on that phone call, his recollection is just different from yours?

Mr. HOLMES. It's different.

Mr. STEWART. Now you testified you recall Judge Nixon inquiring whether the phone call to Wiley Fairchild from the farm had been taped?

Mr. HOLMES. That's correct.

Mr. STEWART. And if Judge Nixon doesn't recall asking that, then his recollection is different?

Mr. HOLMES. It is a different recollection.

Mr. STEWART. And you've also testified, I believe that at about that time, you asked Carroll Ingram if the phone call had been taped?

Mr. HOLMES. Shortly thereafter.

Mr. STEWART. That was in the spring when Judge Nixon asked you that?

Mr. HOLMES. That is correct.

Mr. STEWART. That was your trial testimony?

Mr. HOLMES. That's correct.

Mr. STEWART. And if Carroll Ingram does not recall such conversation in the spring of 1984, but rather says—1984, but says rather it came after the grand jury appearance in July, then his recollection on the date is different from yours, is that right?

Mr. HOLMES. It's different.

Mr. Stewart. I do have a couple of questions about your grand jury appearance in February of 1985. That is I guess your second one. Your first one involved two dates.

Mr. Holmes. OK.

Mr. Stewart. Before you went to testify or were summoned, you learned from Carroll Ingram or some third party that Mr. Ingram had been in Washington talking to the prosecutors, is that right?

Mr. Holmes. That's correct.

Mr. Stewart. And that he had told the prosecutors about the phone call from the farm?

Mr. Holmes. That's correct.

Mr. Stewart. And you got the idea that you wanted to go talk to Carroll Ingram about that subject in February of 1985?

Mr. Holmes. I did go talk to him.

Mr. Stewart. Judge Nixon didn't suggest that to you?

Mr. Holmes. He did not.

Mr. Stewart. And you had never testified before the grand jury before then about the phone call because you hadn't been asked about it, had you?

Mr. Holmes. Had not been asked, that's correct.

Mr. Stewart. You figured you were going to be asked about it this third time?

Mr. Holmes. I knew after talking to Carroll, Carroll said no ground related, and I ought to come on in and tell them about it. He already told them about it. OK. No problem.

Mr. Stewart. A couple of days later you went back and saw Mr. Ingram again, didn't you?

Mr. Holmes. I did.

Mr. Stewart. And you asked him if he would search his memory and be sure he is right about the phone call, isn't that right?

Mr. Holmes. That's correct.

Mr. Stewart. And he said, "Mr. Holmes"—or "Bud"—whatever he called you—"I know what I know, I remember what I remember"?

Mr. Holmes. Words to that effect.

Mr. Stewart. Now one of the counts of the information—I shouldn't say counts, one of the clauses, specifications in the information to which you did plead guilty involved your contact with Mr. Ingram, didn't it?

Mr. Holmes. I don't recall.

Mr. Stewart. Let me read it to you. It is paragraph 1(a), says that defendant "inquired of others whether they had discussed the aforementioned telephone call with Federal authorities so as to be able to tailor his own grand jury testimony." That refers to Mr. Ingram?

Mr. Holmes. I have no recollection of telling him or somebody on the street.

Mr. Stewart. Was there anybody else?

Mr. Holmes. All I am saying is I don't remember mentioning Carroll Ingram in it specifically. I assume—I assume that's who they are talking about. However, other things they asked him about, I assume there were people—found out later, told him about other people.

Mr. STEWART. After you spoke to Carroll Ingram in February, 1985, you called Judge Nixon to talk to him; and you went to the Federal Court House in Hattiesburg to talk to him?

Mr. HOLMES. Right.

Mr. STEWART. It is your recollection that he denied on that occasion that the phone call had occurred?

Mr. HOLMES. That's correct.

Mr. STEWART. And if he recalls at the time that he confirmed to you that the phone call occurred, your recollection is different, is that right?

Mr. HOLMES. I remember what I testified to.

Mr. STEWART. OK. There is something about your testimony, and it came up again yesterday, though right here, that I want to focus on for a second. After you spoke to Mr.—Judge Nixon, but before you go to the grand jury, you got a message from Judge Nixon's lawyer through your lawyer, do you recall that?

Mr. HOLMES. Right. Through Bill Goodman.

Mr. STEWART. Through Jim Dukes, your lawyer?

Mr. HOLMES. Right.

Mr. STEWART. The message was Judge Nixon remembers the phone call, he says you placed it, says you got it, says you got telephonitis.

Mr. HOLMES. That's correct.

Mr. STEWART. So when you walk into the grand jury, you know that Carroll Ingram confirms the phone call, you know Wiley Fairchild confirms the phone call?

Mr. HOLMES. I don't know that. They didn't tell me what—I did not know what Wiley said.

Mr. STEWART. Carroll told you they all knew about the phone call before he got there, didn't he?

Mr. HOLMES. I believe he said that. They never discussed what they knew or how they knew or anything like that.

Mr. STEWART. Wasn't anybody else on the line except you, Wiley, and the Judge?

Mr. HOLMES. OK.

Mr. STEWART. OK. Now Judge Nixon confirmed to you the phone call existed?

Mr. HOLMES. That's correct. Right.

Mr. STEWART. No reason why to cover up the phone call, is there?

Mr. HOLMES. No. There truthfully wasn't any reason.

Mr. STEWART. Now you know at that time that Judge Nixon, from this message you received, recalls that you placed the call?

Mr. HOLMES. That's his recollection.

Mr. STEWART. Your recollection is different than his?

Mr. HOLMES. It's different, yes, sir.

Mr. STEWART. You remember you told the grand jury, and it's in your transcript at page 40, that Judge Nixon placed the call in February?

Mr. HOLMES. That's my memory.

Mr. STEWART. Sure. That's what you told them then?

Mr. HOLMES. OK.

Mr. STEWART. You weren't protecting him at that time, were you, by saying——

Mr. **Holmes**. No. When I came back—no. Which one?

Mr. **Stewart**. This is February of 1985.

Mr. **Holmes**. Yes. I was still trying to soft-pedal it. I knew the details of it. Felt like he knew the details of it.

Mr. **Stewart**. OK.

Mr. **Holmes**. And the only message I got was he didn't know why I called, which wasn't accurate, and I got telephonitis, out of the clear blue, picked up the phone and called him. If it wasn't accurate—I tried to soft-pedal it in the grand jury.

Mr. **Stewart**. You didn't adopt that story, did you? You didn't say that? You didn't say you placed the call? You said he placed the call?

Mr. **Holmes**. That's correct.

Mr. **Stewart**. So you didn't protect him on that, did you?

Mr. **Holmes**. Well, I don't—by soft-pedaling it, I assumed I was trying to protect him.

Mr. **Stewart**. On this point, though, you didn't? It was the only concrete point you knew that he was going to say was that you placed the call, and you didn't protect him on that?

Mr. **Holmes**. No. You know, I said what I said to the grand jury.

Mr. **Stewart**. On the other four counts on which you got indicted, count 2, 3, 4, and 5, you said yesterday that you didn't think they were worth a warm bucket of spit, or words to that effect, none of those counts related to Judge Nixon, did they?

Mr. **Holmes**. I don't recall what the counts were, but I don't think so.

Mr. **Stewart**. Involved State Senator Burgin?

Mr. **Holmes**. Right.

Mr. **Stewart**. Involved your talking to Drew at the time?

Mr. **Holmes**. Whatever.

Mr. **Stewart**. The indictment——

Mr. **Holmes**. Nothing——

Mr. **Stewart**. Nothing had anything to do with Judge Nixon?

Mr. **Holmes**. Did not.

Mr. **Stewart**. Whether that testimony was true or not—and I am not here to resolve that today—none of that testimony you got indicted for on counts 2, 3, 4 and 5 was given to protect Judge Nixon?

Mr. **Holmes**. I don't recall that. They speak for themselves, whatever they said.

Mr. **Stewart**. Well, at trial, and it's at page 793, you agreed count 2 wasn't given—your testimony was the charge for perjury in count 2 was not given in order to protect Judge Nixon?

Mr. **Holmes**. What was count 2?

Mr. **Stewart**. Exhibit 31—I believe that is the one relating to Drew Fairchild. The testimony allegedly was false, "in that Paul H. 'Bud' Holmes did meet with Drew Fairchild soon after the drug arrest and before his state indictment." That's back in 1980. "During that meeting the Defendant, Paul H. 'Bud' Holmes, did ask Drew Fairchild if he had any money for the case."

We talked about this count yesterday, actually. That had nothing to do with Judge Nixon, did it?

Mr. **Holmes**. Did not.

Mr. STEWART. Your testimony there was not given to protect Judge Nixon?

Mr. HOLMES. Was not.

Mr. STEWART. The same is true for count 3. You were charged with perjury or denying that you tried to seek the Drew Fairchild case from George Phillips.

Mr. HOLMES. That's correct.

Mr. STEWART. That had nothing to do with Judge Nixon, did it?

Mr. HOLMES. Did not.

Mr. STEWART. You were not protecting Judge Nixon?

Mr. HOLMES. No.

Mr. STEWART. You did get indicted, though, in count 1 for obstruction of justice for this February testimony. This is on the third trip to the grand jury?

Mr. HOLMES. Right. .

Mr. STEWART. Because you said you did not remember the specifics of the phone call and didn't put any significance to the call. I want to ask you, did you put any significance to the call?

Mr. HOLMES. I did later, sure.

Mr. STEWART. Was it an important call to you?

Mr. HOLMES. At the time it wasn't, no. I knew no one—I mean, to my knowledge, had been—no criminality. I think right now, even the Government concluded there was never any criminality in any shape, form, or fashion in the handling of the Drew Fairchild case in any way.

The only thing that ever came out of it was the conducting of the investigation and what everything was all about right now is the charge of conducting the investigation.

Mr. STEWART. I want to ask you now about this period before you were going to trial, early 1985, the first half of 1985. Around this time, Judge McKenzie announced he is not going to respect Drew Fairchild's plea agreement?

Mr. HOLMES. I have no knowledge. You make the statement.

Mr. STEWART. There has been testimony to that effect.

Mr. HOLMES. OK.

Mr. STEWART. And, in fact, that is kind of what Bill Porter was concerned about back in 1982, Judge McKenzie would not respect that plea, is that correct?

Mr. HOLMES. That's right.

Mr. STEWART. I want to ask you about some testimony Mr. Weingarten gave last month. He testified that Drew Fairchild was going to be a witness against you at your trial if you had gone to trial. Did you expect Drew Fairchild to be a witness against you at your trial?

Mr. HOLMES. Quite frankly, after I read the grand jury testimony where he said I never asked him for one quarter, any time, shape, form, or fashion, I was hoping he would be a witness.

Mr. STEWART. My question was whether you expected the Government to call him?

Mr. HOLMES. I believe he was on the list, yes.

Mr. STEWART. Mr. Weingarten testified that when Judge McKenzie announced he would not accept Drew's plea bargain, Mr. Weingarten was concerned that some kind of retaliation was going on against Drew, because he was going to be a cooperating witness against you. That was his testimony. Is there any basis for that concern, to your knowledge?

Mr. Holmes. I have absolutely no knowledge.

Mr. Stewart. Do you know of anything anyone did connected to you, your lawyers, anything that might prompt Judge McKenzie to decide to retaliate against Drew Fairchild?

Mr. Holmes. None.

Mr. Stewart. And you know Judge McKenzie, I take it?

Mr. Holmes. Very well.

Mr. Stewart. All right.

Mr. Holmes. Very honorable, excellent judge.

Mr. Stewart. You are anticipating my question. Do you believe Judge McKenzie would retaliate against the Defendant——

Mr. Holmes. I don't believe——

Mr. Stewart. Let me finish the question. Do you believe he would retaliate against a Defendant in his Court to punish them for cooperating in a Federal investigation?

Mr. Holmes. Absolutely not. He has always been extremely cooperative.

Mr. Stewart. You think Mr. Weingarten had no basis for this suspicion of his?

Mr. Holmes. There was absolutely no basis, I have any knowledge whatsoever—in my belief. No basis whatsoever for that.

Mr. Stewart. Something came up yesterday. It came up quickly. I just want to try to cover it. It's the last subject I have right now. I will be asking my co-counsel if they have any other questions.

At your plea negotiations, you testified yesterday that you understood for contempt of Court you could not get both a fine and a jail sentence?

Mr. Holmes. That's correct.

Mr. Stewart. That is what the statute says?

Mr. Holmes. That's correct.

Mr. Stewart. I understood you to say both your lawyers and the Government lawyers told you that?

Mr. Holmes. As I recall sitting there, asking them what the—what could I get, what we were talking abut; as I recall, the question came up, and it was that I would just pay a fine. The question was, well, if we put in paying a fine, time—I said I don't want to do time. Reid's words were the most—and I never heard of anyone in a contempt of Court getting any time, but the maximum in this situation would be the—I certainly can guarantee you——

Mr. Stewart. When you said Reid, you meant Reid Weingarten?

Mr. Holmes. Reid Weingarten.

Mr. Stewart. My question was off to the side of that subject. Was there a discussion as to the statutory requirement you could only be sentenced to either a fine or jail time, but you couldn't get both?

Mr. Holmes. That was what was—I can't say who, and from whose lips it came from. We were in there and had the books out. I remember Bob Drake looked it up. There was some footnotes in there to say that you couldn't get both. I remember that.

Mr. Stewart. Mr. Weingarten was present during that?

Mr. Holmes. I'm sure he was. He read it out while they were drawing up whatever it was they were giving to the Court.

Mr. **Stewart**. That raises a question in my mind, Mr. Holmes, I need to ask you. If the Government attorneys knew you could not get both a fine and jail sentence for this offense, contempt of Court, which you pled guilty to, why didn't they tell the Judge that when you were sentenced?

Mr. **Holmes**. I assume, from what I heard, it is just a lapse of memory. They didn't—at the time I guess it just lapsed his memory. I knew later on he threw a fit. He tried to get me to agree to go serve some time, so forth and so on. I know that. I know he got upset at more than one count, argued like everything to try to get me time. I know that. I know.

I think he misled the Court and misstated the facts when he tried to say I pled more than one count. It is obvious on the face, obvious to the Court, obvious to the world that it is inaccurate.

Mr. **Stewart**. By the same token, Mr. Weingarten did not save the court from this error Mr. Weingarten should have know the Court was committing?

Mr. **Holmes**. It—whether it was his duty or not, it has always been my understanding that the prosecutor should inform the Court as to what the law was and so forth.

Mr. **Stewart**. As prosecutor, that is what you thought your duty was?

Mr. **Holmes**. Every time I had one, the Court stated—what is the fine, what is the maximum—what does this offense call for. That's a very—you tell them what's called for.

Mr. **Stewart**. It is pretty surprising to have the Government mess that up, isn't it?

Mr. **Holmes**. Well, I would be frank when he sentenced me, I thought to myself, you know, I was—I didn't know there was such an animal as a false declaration. I went back and researched it after I was indicted and found out there was. I said, I guess the way my luck is going, they changed the law and they can give me both. I went back and researched the thing. I thought there had been a new Supreme Court case, something new that came out, or a new statute passed. I said, well, that's my luck.

Mr. **Stewart**. But it hadn't changed?

Mr. **Holmes**. Went back and researched it. It went through the computer. It was still like it was. It doesn't change. That's what we all thought. On the way back to Hattiesburg they undoubtedly changed the law.

Mr. **Stewart**. I just need to clarify finally, the sentence the Judge imposed, was that Judge Carr?

Mr. **Holmes**. Judge Patrick Carr, yes.

Mr. **Stewart**. Was a year in prison, plus a $10,000 fine?

Mr. **Holmes**. That's correct.

Mr. **Stewart**. And because the statute said you couldn't get both——

Mr. **Holmes**. The statute is moot on that point. The Supreme Court case——

Mr. **Stewart**. The case——

Mr. **Holmes**. The case——

Mr. **Stewart**. Fine. Because they say you couldn't get both, you went and paid the fine?

Mr. **Holmes**. That's correct.

Mr. STEWART. And then you said the rest of the sentence was void?

Mr. HOLMES. Indications held where—and there are a number of indications where the Court would vote both—most cases where a man would go like 30 days and $1,000 fine.

Mr. STEWART. OK.

Mr. HOLMES. Then he would serve his time, get out, try to do it. A case went up, the Bryant case, a landmark case. The interpreter said either one.

Mr. STEWART. That is what the Fifth Circuit affirmed you on?

Mr. HOLMES. That's correct.

Mr. STEWART. You didn't have to serve any jail time because the sentence had been messed up?

Mr. HOLMES. Well——

Mr. STEWART. The jail time part of the sentence was void?

Mr. HOLMES. Because the law of the land said once you did one, then you satisfied the sentence. In other words, if I served a year, I wouldn't have had to pay the $10,000.

Mr. STEWART. Did you pay that fine that day?

Mr. HOLMES. That day in the rain with a certified cashier's check, yes.

Mr. STEWART. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Stewart.

I believe we will take a 10-minute recess, after which I believe I will ask Mr. Conyers if he has any questions. Then I believe Mr. Keith has a few more questions.

Mr. KEITH. Thank you, Mr. Chairman.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order. We are going to break for lunch at 12:00 o'clock. We hope by then, Mr. Holmes, we will be finished with you. I am sure we will be.

This afternoon, I hope we can begin with Carroll Ingram. I do believe that our next session is scheduled for 9:30 on Tuesday.

Mr. STEWART. We had been told 11:00.

Mr. EDWARDS. Excuse me. That is correct. Me. Sensenbrenner will not be back from home until 11:00.

Mr. STEWART. So it is 11:00?

Mr. EDWARDS. Eleven o'clock Tuesday.

Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman, before he begins, could I just ask a couple of questions?

Mr. EDWARDS. Yes, of course.

Mr. CONYERS. I am just getting up to speed on this case. So I just wanted to ask you a few questions, Mr. Holmes. I know you have been on the stand here giving testimony, and the testimony, of course, is elicited in these kinds of committee hearings not like in a court of law, where we can ask questions many times over and in different ways and maybe sometimes even comment on your answer.

It seems like you had a pretty tough time here because statements from other people have been brought forward, and you have been asked to be held accountable for them.

I just wanted to try to satisfy myself that there seems to have been little doubt in your mind finally, as we are here today, that the discussion that came from Judge Nixon about the Wiley Fairchild case was an influential call, and that sometimes—I may be wrong about this—I get the impression that you tried to keep that unrevealed at some time, so that that may account for some of the discrepancies in all of the different times that you have had to make comment about it.

I would like to just ask you to talk to me about that impression that I have here, just from what we have been doing this morning in this matter.

Mr. HOLMES. All right. There is a very——

Mr. CONYERS. I meant, of course, Drew Fairchild, in that matter.

Mr. HOLMES. All right, sir. Your impression is, I think, a very accurate impression as to what occurred. The matter was a—was not a big matter. It was not a big case at all. What I assume, and Judge Nixon mentioned it to me, was no more than what would happen from any other, you know, passing citizen, in mentioning something to me.

As I gather it, it was nothing but a passing comment that Drew's father had asked the Judge to put in a good word. As District Attorney, this would happen many, many, many times. I took it upon myself to try to make Judge Nixon look like a hero and so forth with Mr. Fairchild. That was what—he did not ask me to do anything, you know, we did discuss it. He didn't ask me for any facts or anything about it.

When the thing, I guess—when the publicity came out with him being a Federal judge and all of the—in all of the crush of the media, as it went on, certainly he did not want to have his name connected, which I can understand, in any way with having anything to do even on the periphery, you know, with a case involving, you know, drugs, anything, because you can blow things out of proportion.

So he just himself—totally to the point of saying I told these people, they came down, asked about it, I never talked to anybody, I never talked to anybody. Well, at that time, quite frankly, I got the impression it was somebody coming down in some type of judicial proponents. I didn't think there was any in-depth type thing. Judge, if you never talked to anybody, you never talked to them. That's fine. No problem. That was—I mean, it started out on what I thought was a very light note. So when the FBI and the people interviewed me, you know, I went along with that thinking.

There was never at any time any impropriety in the handling of the case. It was probably, from a political point of view, it was handled very stupidly, but there was absolutely no suggestions any time of anyone passing money, trying to get money, or to Judge Nixon—I never heard of Judge Nixon doing one thing, like I think he would not do anything to that effect. It was strictly as you perceived it, the way I perceived it.

Mr. CONYERS. Well, let me just try one other question. Name me another influential person with the rank of a Federal judge that ever asked you to help out in a—expressed an interest about a case that you were handling?

Mr. HOLMES. Well, Boyce Holleman, whc is sitting right here in the room, expressed one. Boyce is, you know, a very, very strong person. He represented a person up there. He expressed an interest. We did our best to bring about justice. I think the end result was very good. If that's hat you are talking about.

Mr. CONYERS. You are talking about the co-counsel?

Mr. HOLMES. Yes, sir. Mr. Holleman right here. Other indications.

Mr. CONYERS. That may have been someone that he was representing?

Mr. HOLMES. It was someone he was—actually, it was from his former home town of Wiggins, Mississippi. He knew the family a long time. There was a young man from Wiggins. He was black. He had gone through the university out there. He messed up. We tried to—he asked me to help him.

We worked out something I thought would be of benefit. The young man is a very productive citizen right now. So this man at one time was involved with drugs.

Mr. CONYERS. Can you think of another judge that called you about a matter other than Judge Nixon? Offhand?

Mr. HOLMES. Offhand, I can't, you know, I can't—might have been a State Judge. Different times people get speeding tickets. They had things like that coming through the county and different ones, marshals, something—not the Judges directly would. They would say, "This is the Judge's secretary, her son was going to the university, could you help out," something like that. I am sure there have been a number of instances like that.

Mr. CONYERS. You wanted to help out an old friend, Judge Nixon?

Mr. HOLMES. Well, I wanted to give him credit for it. If—yourself, if someone from your office called and said, there's a young man playing football at the university from our area, and I work in the Congressman's office and he is not asking you to do anything improper, but I do know the family is concerned over it, any information we can give you. Just the fact your office called, I'd give it special attention. I'd try to extend professional courtesy; if I could put the young man on first offense, I'd be more than glad to.

Just the very—the mere fact of your office. We have—other District Attorneys' offices around the country, we call, inquire. I know one time a young man who had been charged with manslaughter for running over—another coed was down there and his brother, who was Chief of Police over in Alabama, Bessemer, Alabama, was asked on the fact it was the Chief of Police. I had him released to him. He didn't ask for it, but I just extended professional courtesy. I've done that many, many times.

Mr. CONYERS. Thank you very much. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Conyers.

Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. Holmes, let's begin with a comment Mr. Conyers made, which is that you have been under perhaps a great deal of stress, you have been questioned many times in connection with this matter, both in the grand jury on several occasions, at Judge Nixon's trial, and again here today.

Let me step back from this for a second and go through with you at least what I see to be the crux of this matter, which is whether Judge Nixon testified truthfully in the grand jury or not.

I would ask you to turn to the transcript of Judge Nixon's grand jury testimony, which is the subcommittee's Exhibit Number 23. If you would pull that out, sir.

Mr. HOLMES. All right, sir. I have it.

Mr. KEITH. Just to set the stage for Judge Nixon's grand jury testimony, that occurred in July of 1984, isn't that right, sir?

Mr. HOLMES. I believe it says July 18. I'm looking at it.

Mr. KEITH. To your knowledge, the investigation began, or at least you came to learn of it, sometime in April of 1984?

Mr. HOLMES. I believe that's the date, yes, sir.

Mr. KEITH. And you testified yesterday and also in response to Mr. Conyers' question that you did talk with Judge Nixon sometime in April of 1984 about the investigation?

Mr. HOLMES. That's where I learned about it.

Mr. KEITH. And tell us again what Judge Nixon told you in that conversation?

Mr. HOLMES. He called me. He was incensed, mad, just livid that, as I gathered, someone accused him of improper dealings with the Drew Fairchild case or having improperly done it. I assume—I don't remember, but, as I recall it, it had something to do with his interest or his dealings with Wiley Fairchild, I guess, with oil interests.

Anyway, he was fighting mad, so to speak, about it. He repeated, he says, "I told these people I didn't have anything to do with the case, never had anything to do with it, told them I never talked to anybody at any time."

Mr. KEITH. That wasn't true, was it?

Mr. HOLMES. Well, we talked about it, sure. You know, he said he talked about it. He said, "I've never"—told them, "I never talked to anybody at any time"; so the Judge, if he said he never talked to anybody, he never talked to anybody. OK.

What's the big deal? I knew good and well there was nothing that I had any suspicion of of any wrongdoing in connection with the case.

Mr. KEITH. And your response to that at that time was to make the decision that you would go along with the Judge?

Mr. HOLMES. For whatever reason—I don't know. I assumed that he had stated to him—I don't know—I never seen what he told him in that interview. As I gather it, he was telling me he told them in that interview he had never talked to anybody and that in all likelihood, they would interview me. So I assumed, as I gathered, that that was his position. OK.

If you never talked to them, he never talked to me. What's the big deal?

Mr. KEITH. Knowing the Judge as you knew him, that was his message and your reaction to that message was to essentially take his position, too, when it came time for you to be interviewed?

Mr. HOLMES. If he told them that, I wasn't going to go in there and, you know, cause him embarrassment or get a big disagreement. Honestly, I saw there was absolutely nothing to it. You know, man, I just thought it was nothing to it. I knew there had been nothing illegal done. I wasn't even really concerned about it. I thought it was something—I thought some judicial group coming by to check out what somebody made a complaint about a Federal judge, you know, down there. That was basically what it was. That was the impression I had of the type investigation it was.

Mr. KEITH. And then the time came for Judge Nixon to testify in the grand jury, is that right, sir?

Mr. HOLMES. Well——

Mr. KEITH. July, 1984?

Mr. HOLMES. Right.

Mr. KEITH. Turn, if you would, sir, to page 75 of Judge Nixon's grand jury testimony.

Mr. HOLMES. What page?

Mr. KEITH. Seventy-five.

Mr. HOLMES. All right, sir.

Mr. KEITH. And you know, sir, both as a prosecutor and as a witness that someone who testifies in the grand jury is under the obligation to tell the truth, the whole truth, and nothing but the truth.

Mr. HOLMES. Yes. I assume it is the first of his, I guess. I'm assuming—I know every time I did, they read it, and they always went through the reading of the oath.

Mr. KEITH. Just representing to you on page 2 of the transcript, the foreman swears the Judge in saying, "Do you solemnly swear that the testimony you're about to give in the cause pending before this grand jury will be the truth, the whole truth and nothing but the truth, so help you, God?"

Mr. HOLMES. Yes, sir. Every time I did—my understanding is he went in voluntarily. I didn't know if they put him under oath.

Mr. KEITH. At page 75 of the transcript, you see there Mr. Weingarten asked the question, "All right. Judge, do you have anything you want to add?"

Mr. HOLMES. I see that, yes.

Mr. KEITH. And Judge Nixon responds to that question, isn't that right, sir?

Mr. HOLMES. Yes, I do.

Mr. KEITH. Right. Let me take you to page 76, which is part of Judge Nixon's response to that question. One of the answers that he gives, and this was part of count 4 of his indictment and one of the counts on which he was convicted, part of his answer is, "Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in Federal Court or State Court."

When Judge Nixon said he had nothing whatsoever unofficially to do with the Drew Fairchild criminal case, was that statement true or false, sir?

Mr. HOLMES. Let me make this observation, if I may. It is hard for me—I want to be fair. I don't know what his state of mind was or what he was thinking. All I can tell you is that we discussed it, or talked about it, words were said. As far as him officially directing me or unofficially directing me, no, he didn't do that. As far as it having influence on me for what I did, it had a—how much influence, you know, that's—only a good lawyer—it did have some influence on me. If that constitutes unofficial, then that constitutes unofficial. But he never said, "How about passing it" or something of that nature.

Mr. KEITH. He did, in fact, have something to do with the case?

Mr. HOLMES. We talked about it. Sure. It wasn't any—he didn't draft any pleadings or help me word anything. If we want to call that unofficially. But he—by his talking to me, as I tried to explain to Mr. Conyers, it had some influence on me, as it would be if Mr. Conyers called me. It had influence on me, sure.

Mr. KEITH. And you mentioned, in response to Mr. Conyers' questions, that that would be as a matter of courtesy because of his professional office?

Mr. HOLMES. It would be—that's correct. If a preacher in Hattiesburg called me, or somebody else. I did that all the time.

Mr. KEITH. Going further down to a statement that was actually not part of the charge in count 4, Judge Nixon makes the statement, "I have never talked to anyone about the case, any Federal judge or State judge, Federal prosecutor or State prosecutor." Is that statement true or false?

Mr. HOLMES. That's false. He did talk to me. I was the State Prosecutor. He did talk to me.

Mr. KEITH. And then further down, Judge Nixon again makes the statement, down near the bottom of the page, "and never talked to anyone, State or Federal, prosecutor or judge." Is that statement true?

Mr. HOLMES. No, sir. Like I said, many, many, many times he did. Judge Nixon verified—we have a difference of memory of what was said.

Mr. KEITH. Then Judge Nixon makes the statement that he did not—bottom of page 76, top of page 77, "in any way influence anybody with respect to this case."

Did Judge Nixon's involvement in the case, did his conversation with you, and subsequent conversations with Wiley Fairchild influence you with respect to the Drew Fairchild case?

Mr. HOLMES. It did. Whether or not he intended to influence me would be a question for the jury and the panel. It did influence me. Whether or not it was intentional or unintentional, I don't know; but it did influence me.

Mr. KEITH. Then let me turn you to page 78 of Judge Nixon's grand jury transcript. Beginning with the paragraph, "But let me just say in parting, Mr. Weingarten and Mr. Richter, I even more—more am outraged by the insinuation that I would assist anyone involved in drug trafficking, bringing drugs into the State of Mississippi."

Mr. Holmes, did Judge Nixon, by his conversation with you, by his involvement in the Drew Fairchild case, in fact assist Mr. Fairchild's son, who was being prosecuted for drug trafficking?

Mr. HOLMES. Yes, sir. As I testified, whether or not—to what extent or whether or not he intended to, but it did influence me in my actions. Even though it was unsolicited on his part, it did.

Mr. KEITH. Now just to clarify your answer, I believe it was to Mr. Conyers' question, you testified that there was no reason to cover up the phone call?

Mr. HOLMES. Absolutely none.

Mr. KEITH. There was no logical or truthful reason to cover up the phone call?

Mr. **Holmes**. Absolutely none. You could parade it on the front page of the Wall Street Journal or the Washington Post. It would have been fine with me.

Mr. **Keith**. Nevertheless, you did cover up the phone call. Why was that, sir?

Mr. **Holmes**. Well, initially I just thought it would keep down embarrassing situations. Of course, after I went in to talk to the FBI, I forgot about it, you know, would have—after I made that stand, I just stuck to it until it looked like the thing had gotten serious.

Mr. **Keith**. The reason why you did that was to help Judge Nixon?

Mr. **Holmes**. Well, I mean—just to keep down embarrassment. It wasn't a matter of helping. He had done nothing illegal. There had been nothing suggested or implied that he had done that I knew of. It was just to keep down embarrassment.

Mr. **Keith**. Judge Nixon had taken the position with you in the telephone conversation and in public statement and again in the grand jury that he had no involvement whatsoever. Wasn't that true?

Mr. **Holmes**. That's what he testified to. He made that statement, made a public statement or released a press statement to that effect, was on TV. I am sitting there watching before going to the grand jury. He's sitting there saying "I've never talked to anyone about the case, a Federal judge, State judge, Federal prosecutor, State prosecutor." I am getting ready to go to the grand jury. There he is making that statement publicly.

What am I going to do? Walk in the grand jury and say, "Hey, Judge, you are lying? He did talk to me." I mean, you know, what am I going to do? I have to make a decision. I made the wrong decision.

Mr. **Keith**. You made a decision not to tell the truth?

Mr. **Holmes**. I made a decision to go along with it, hoping that they would come to the bottom, find out there was nothing done wrong in the case, they'd say there was no bribes, no—I thought that's what the whole case was, a bribe with these deeds paid to Judge Nixon. I think that's what they came down and investigated. These deeds to Judge Nixon to fix the Fairchild case, because the whole focus was why did you get it from George Phillips? Did you call up? Here is the date of this deed. Here is this. On this date, or day, they back-dated to cover it up.

That was really a bunch of money given to Nixon to come fix the case, which was absolutely zero. The Government determined that. They came back with that conclusion. Zero, zero, zero, to that effect. We were lead down a bridal path. We were ambushed to it. Zero to date.

The end result, however, during the investigation, during the investigation you all didn't cooperate. You know, and—so, you know, I take my licks and Judge Nixon is taking his.

To go back to our question on the grand jury when he said "I never talked to anyone about it," he said that, that's just not true. He's testified he's talked to me, just a difference of what was said. No way. You know, I'm——

Mr. KEITH. Now, Mr. Holmes, you mentioned a remark that you attributed to Mr. Weingarten yesterday, something to the effect he said convicting a Congressman would be no problem, but getting a Federal judge would be tougher.

Did Mr. Weingarten say that to you, sir?

Mr. HOLMES. I can't say whether he said it to me directly or whether or not I just heard it or whether it was something that was just batted around.

There was so many statements you attributed to people making statements. I can't say under oath that I heard Mr. Weingarten make that statement.

Mr. KEITH. There were a lot of rumors floating around at that time including rumors you killed your friend Bill Horton; is that correct?

Mr. HOLMES. That is right.

Mr. KEITH. You can't say whether Mr. Weingarten made that statement or whether it was simply a rumor?

Mr. HOLMES. It is what I think I testified to yesterday. If I was asked what rumors I ever heard, we would be here for the next three weeks if I remembered that.

Mr. KEITH. Even if the remark was made, it might have been a joke?

Mr. HOLMES. It could have been a joke.

Mr. KEITH. Let me go back to your conversation with Judge Nixon at the outset about Wiley Fairchild when he was asking you for your perception of what Wiley would do in connection with the oil deal.

Let me read you your trial testimony and have you tell me whether that is in fact accurate or not.

This would be page 728.

"What was the conversation you had with Judge Nixon about this particualr matter?"

Answer: "My advice to him was that if Mr. Fairchild wanted to do some investing with him, I felt it would be very, very safe, that I did not feel Mr. Fairchild, with the reputation he had, would be in any way, that he would lose money investing with Mr. Fairchild."

Mr. HOLMES. That was my opinion.

Mr. KEITH. And you told Judge Nixon that?

Mr. HOLMES. I am sure I did.

I would have told you the same thing if you called and said, "I want to invest some money and I have an opportunity to invest with Wiley Fairchild. What is your opinion?"

I would say, "Wiley enjoyed the reputation of saying, 'See, I told you it is a good deal, didn't I?'"

Wiley didn't go out and solicit people. Whatever he would do, he would generally, he enjoyed the reputation of putting people in very good select things because he enjoyed the ego trip, whatever you want to call it, people bragging on Wiley: "Wiley, you sure were right," just like stockbrokers like to tip people on stock.

Mr. KEITH. As you testified, yesterday there was discussion between you and Judge Nixon on the drive out to the farm about the possibility of other investments with Mr. Fairchild?

Mr. HOLMES. That is correct. We were sitting there chitchatting. He was happy and thought he might invest some more with him.

There is no connection. I never was—there never was any connection between anything Wiley Fiarchild and Judge Nixon did from a business point of view that was correlated to, "You do this for me and I will do that for you." It never was. I never got that impression.

Mr. KEITH. The only connection would be, Mr. Holmes, when you heard Judge Nixon say he wanted to put in a good word for Wiley's son and heard him say he was pleased with his investments with Mr. Fairchild, you assume he was trying to ingratiate himself with Mr. Fairchild?

Mr. HOLMES. I am sure he wanted to say, "Hey, I put in a good word. I will mention it to Bud. I don't care what Wiley wants. I will send him to the penetentiary."

I think his answer would have been, "I did what I could. You boys are in for a rough time."

It wouldn't be, "But, give the boy a break." It wasn't none of that. I think it was a no count, you know, he was gone forever.

The judge said no skin off his teeth. He probably told Wiley, "I did what I could, but I couldn't do nothing."

Mr. KEITH. Judge Nixon didn't know Wiley Fairchild until he entered into investments with him?

Mr. HOLMES. That was my impression when we talked.

Mr. KEITH. Can you think of any other reason why Judge Nixon would have tried to put in a good word for Wiley's son?

Mr. HOLMES. Judge Nixon did not. He said, "Wiley asked me to put in a good word." He did not say, "I want to put in a good word."

He said, "I am not asking you to do anything. I don't want you to do anything. I have never asked you to do anything against your oath of office. You never asked me to do anything against my oath of office. However, Wiley Fairchild asked me to put in a good word for his boy."

And he said, "I don't know anything about the case. I am not asking you about it."

And that was when, you know, my response was, I said, "What does he want us to do? Ask him for forgiveness? What does he want? Does he want a pardon from the State for arresting him?"

Mr. KEITH. The point I was trying to make, Mr. Holmes, and maybe I can rephrase the question, other than Judge Nixon's relationship with Wiley Fairchild, was there any other reason for him to pass the message on to you?

Mr. HOLMES. No, there had been no other reason. I don't know any other contacts he had with Wiley.

I mean, I assume that Wiley just asked him to put in a good word for his boy.

Mr. KEITH. Now, both today and yesterday you made a number of remarks about the investigation and the Government's treatment of you.

Isn't it fair to say, Mr. Holmes, that at bottom, you plead guilty to a crime that you did, in fact, commit?

Mr. HOLMES. I did commit a crime. They didn't ask me about, and I didn't tell them. They asked me any other time can you think about. I did not think about the phone call. I could not volunteer it.

Mr. KEITH. In regard to the prosecution's handling, at least of your case, let me read you an excerpt of what you said at sentencing after you were sentenced and ask you if that is accurate at the time you told that to the judge.

"Your Honor, I asked Mr. Fanning if it were appropriate for me on a personal note to thank this court for being so understanding and the court being so dignified in the conduct of the many court courtesies it extended to me through the attorneys.

I would also like to thank Mr. Weingarten and Ms. Little. I know it has not been a pleasant task for them. I want to believe they take no personal delight in this. But it is their job. It is what they are hired to do. And I wouldn't respect them if they didn't handle them the way they would do."

Isn't that what you told the judge at sentencing?

Mr. HOLMES. I told the judge. I will tell you that.

You know, that is what I have always done. It has been my opinion. Rather than violently disagreeing with the way they were handling it, I did then and do now. I would like to have enough confidence in our system, and I want to believe that they did what they thought was right. I would hate to have that.

However, I violently disagree with the fact that they did not, them telling me I was a target. I violently disagree with them coming before the grand jury and explaining this.

Had I been notified that I was a target, then I certainly would have gone and gotten an attorney that was familiar with the Federal court system rather than walking over there like a baby for slaughtering and going in there and let them set all the traps for me for which I was later indicted.

I knew I had done nothing wrong. I knew there had been no money passed. I knew as it all came out that that was the fact.

So I felt very confident. I was wrong in going over there and doing it.

What I should have done is gone and plead the Fifth.

Mr. KEITH. Or told the truth in the grand jury.

Mr. HOLMES. I told the truth. They indicted me of a lot of things I told the truth on.

For instance, they indicted me on one where I asked them to name the time, date and place of what it was. They wouldn't do it. They indicted me on—said I never talked to Drew Fairchild about money.

I been over there with you. Drew says he came in with Bill Porter, and they talked about the fine.

I said, "Maybe you can get off with a fine and everything in Federal court."

Now, later on in that same context, I came back and said it could have been that Drew might have come to the office with Bill Porter one time. I just don't remember and I don't remember to this good day.

We certainly were talking about money.

Mr. KEITH. Just with regards to the—to your conviction—that was based on not telling the truth in the grand jury?

Mr. HOLMES. That was based upon my not telling the truth about the phone call. That is the only thing I felt like I was in any way remotely guilty of.

Mr. KEITH. Thank you, Mr. Holmes.

Thank you, Mr. Chairman. That is all I have.

Mr. EDWARDS. I am going to ask some questions. Maybe Mr. Conyers has another question. Then Mr. Stewart will have a question or two.

The night of the phone call at your farm, how much drinking was going on?

Mr. HOLMES. We had a couple of drinks at the office. We probably had a couple more out there.

I would say——

Mr. EDWARDS. We are talking about four or five?

Mr. HOLMES. A minimum of three to a maximum of six.

Mr. EDWARDS. A maximum of six?

Mr. HOLMES. Maximum.

I don't recall exactly. We weren't keeping count of them, but we had two or three out there.

Mr. EDWARDS. Count 1 in the indictment of Judge Nixon has to do with illegal gratuities. That is the allegation then as a violation of 18 U.S.C. 201(g).

Strangely enough, it doesn't say in the indictment what 18 U.S.C. 201(g) says. It is very specific that a public official, whatever, former Senator, directly or indirectly solicits, accepts to receive or agrees to receive anything of value for himself for and because of any official act—that is the key—performed, or to be performed by him.

So it would have to be an official act of a Federal judge; is that correct?

Mr. HOLMES. That is the way I read it, yes.

Mr. EDWARDS. To your understanding, is that what the judge made clear to the jury?

I know this is not your trial.

Mr. HOLMES. I can think I might be able to enlighten the court. The prosecutor knew before we started that there would be no basis for that. He told the jury.

The thing that I think was persuasive to the jury is the fact it made the papers.

People understand these things. They want to be able to bring that before the jury.

Then at the closing, from my understanding, the Federal court got up—and I read this in the paper—and said on that we want to find him basically, there is no proof of that. We have reached officially by the Government that there is no gratuity given.

That is like throwing a skunk to the jury box and taking it out and saying to the jury, "Y'all disregard the odor."

Mr. EDWARDS. Why would he have written count 1 and put it in if he probably knew he was going to lose?

Mr. HOLMES. He didn't lose it. It is a multiple count indictment.

Mr. EDWARDS. Yes.

Mr. HOLMES. You get this in about how much you make, how much did you get out of oil wells and this, this, this, and this. And the jurors hear all these things.

Mr. EDWARDS. In other words, you think he might have included count 1 so the jury would hear a lot of background information?

Mr. HOLMES. That is right. That is a trial tactic, you know.

Like we always say down there, it is like throwing a skunk to the jury box and taking it out and say, "Y'all disregard that odor when you go into the jury room."

Mr. EDWARDS. Would you write a count like that?

Mr. HOLMES. We have one-count indictments. We don't give the—I think it is very unfair because jurors are not, they don't understand it. Very often jurors will go out and say, "Let's give both sides a little something. Let's find him not guilty on each three, but let's give the prosecutor something, too. Let's get him on one."

But one felony conviction is just about like saying, "We didn't kill you with a 45. We just shot you with a little 22."

Mr. EDWARDS. Thank you, Mr. Holmes.

Mr. Stewart?

Mr. STEWART. Thank you, Mr. Chairman.

Mr. Holmes, I have a couple of questions.

Mr. Keith asked a couple of questions referring to Judge Nixon's grand jury transcript. I just wanted to look at it again because I wasn't too sure about the context in which the questions were asked.

There is a statement at page 18. Let me read it to you.

Judge Nixon said, "I am even more am outraged by the insinuation that I would assist anyone involved in drug trafficking."

Now, do you have any basis for thinking that Judge Nixon was not outraged by that insinuation?

You have described him over and over again as being very angry.

Mr. HOLMES. He was very angry. As I gathered it, he was very, very angry over anyone accusing him of any impropriety involving his dealings with Wiley—Mr. Fairchild, excuse me.

At this time, there had been so many, every time you turn on the television. As he pointed out in here, the media and everything caused him a lot of problems.

Mr. STEWART. What he is saying there is he is angry, and you have no reason to say he is not angry?

Mr. HOLMES. I have no reason to say he is not angry.

Mr. STEWART. You have no reason to believe that is not truthful testimony?

Mr. HOLMES. If he said he didn't assist, if you want to get into a technical part, that is what they did, everybody splitting hairs around here.

Mr. STEWART. I have got to read the testimony. I am a lawyer.

Mr. HOLMES. Good.

Mr. STEWART. Two pages earlier, you were asked about this statement that he had had nothing whatsoever officially or unofficially to do with Drew Fairchild's criminal case in the Federal court or State court. He never had anything to do with it in court, did he, to your knowledge?

Mr. HOLMES. No, sir, only on unofficial parts. Like I tried to testify was the fact that he talked to him—if that is an unofficial act, I don't know.

Mr. STEWART. It wasn't in court?

Mr. HOLMES. No.

The unofficial parts, I guess, they are trying to say, are that, as I gather it, is when I did what I did in court, that that some way had an unofficial bearing on him.

Mr. Stewart. He had nothing to do with anything in court?

Mr. Holmes. No.

Mr. Stewart. This other passage read to you, I never handled any part of it.

I don't know whether someone told me maybe Judge Russell handled one of the other defendants also.

Judge Russell is a Federal judge in Gulfport?

Mr. Holmes. Gulfport, Mississippi.

Mr. Stewart. Judge Nixon says, "I never handled any part of it. It is clear from the context he is saying he wasn't the judge on the case; is that right?

Mr. Holmes. That is correct.

Mr. Stewart. Never had a thing to do with it at all. He does say "never talked to anyone, State or Federal prosecutor or judge," but that is not the end of the sentence. He then says, "in any way influence anybody with respect to this case."

My question is, if he is saying there that he did not in any way talk to someone to influence them, isn't that consistent with your testimony that he was not attempting to influence you?

Mr. Holmes. I think I testified to that.

Mr. Stewart. Several times?

Mr. Holmes. Many times.

One of the problems is, I know what you said, he doesn't—it doesn't say to influence. It says "in any way influence."

Mr. Stewart. I read the indictment to you where the Government said it was false because he, in fact, tried to influence you, and you agreed that he hadn't tried to influence you.

Mr. Holmes. Personally, that—like I tried to tell everybody, that is a question for interpretation. I have said emphatically, and I say again and again, I will say it one more time, he was very emphatic overtly that he did not want me to do anything, he won't ask me to do anything, did not ask me about the case.

I am sure with me and my big mouth, I would probably start trying to tell him about it, and I think he would shut me up and say he didn't want to hear about it.

Mr. Stewart. If you hadn't said anything, you wouldn't have heard any more about it?

Mr. Holmes. No.

Mr. Stewart. The Government asked for the right to give you a polygraph exam?

Mr. Holmes. That is right.

Mr. Stewart. You had no problem?

Mr. Holmes. I volunteered.

Mr. Stewart. In all of this Drew Fairchild business, the Government never gave you a polygraph?

Mr. Holmes. No.

Mr. Stewart. They did give you an examination for Petit Bois Island?

Mr. Holmes. Yes.

Mr. Stewart. That is all I have.

Mr. Boyce Holleman. On the case the witness referred to, I was defense counsel for a young man charged with, I think, breaking in the girl's dormitory, hired by his mother. I did everything I could, including camping on Mr. Holmes' doorstep to try to influence, to save that young man's life.

I just want to say that so it wouldn't be misconstrued.

In my role as an attorney, everything in that was absolutely proper.

Mr. **Holmes**. I did not mean to imply that you did it.

I tell you another case, Boyce that worked out. There was a colonel up there. What was his name? He was over in Georgia that you called me on.

Mr. **Boyce Holleman**. An Air Force colonel charged with armed robbery. He was finally convicted. The Government released him. I don't think yet he was guilty.

I just wanted to clear that up because sometimes the press miconstrues.

Mr. **Edwards**. We appreciate that.

Mr. Conyers?

Mr. **Conyers**. I still think that you have told us, and tell me if I am wrong, this is the only judge you got a call from?

Lawyers you have gotten calls from. Preachers you have gotten calls from. Prominent citizens. But you never got a call from any other judges that you can remember?

Mr. **Holmes**. You know, probably State judges maybe. I don't remember any other Federal judges. I can't recall any. Maybe some of the people that might have worked in their offices called me.

We knew them all down there. We knew them by their first names, the secretaries, the marshals.

Mr. **Conyers**. Have you said that if it hadn't been for the Judge Nixon call, that case would have never been passed to the file?

Mr. **Holmes**. Mr. Conyers, if I had not felt like I made a promise coupled with Bill Porter insisting on it, you know, we talking about it, then it is my opinion I would not have passed it to the file.

Mr. **Conyers**. Thank you, Mr. Chairman.

Mr. **Edwards**. Thank you for coming up voluntarily. We appreciate it. You didn't have to have a subpoena or anything. You have been an interesting witness.

Thank you very much.

Mr. **Holmes**. Thank you very much.

[Witness excused.]

Mr. **Edwards**. Is Mr. Carroll Ingram here?

Good morning, Mr. Ingram.

[Witness sworn.]

TESTIMONY OF CARROLL INGRAM

Mr. **Edwards**. Good morning. We welcome you.

This is a congressional hearing, not a trial, and the Assistant Counsel, Ms. Naughton, will question you first.

Ms. **Naughton**. Thank you, Mr. Chairman.

Mr. Ingram, what is it you do for a living?

Mr. **Ingram**. I am a lawyer.

Ms. **Naughton**. Where did you go to law school?

Mr. **Ingram**. University of Mississippi, 'Ole Miss.

Ms. **Naughton**. What year was that?

Mr. **Ingram**. I graduated in 1967.

Ms. Naughton. Where do you live?

Mr. Ingram. Hattiesburg, Mississippi.

Ms. Naughton. What sort of practice do you do?

Mr. Ingram. I have a general law practice, civil practice.

Ms. Naughton. Have you ever run or served in any political office?

Mr. Ingram. I served in the State Senate for eight years, from 1972 to 1980.

Ms. Naughton. What committees did you sit on?

Mr. Ingram. I chaired the Judiciary. I served on the Finance, on the Banks—Banking, two or three other committees.

Ms. Naughton. What is your relationship with Wiley Fairchild?

Mr. Ingram. My relationship with him is that he is a relative of mine. He is a second cousin. I have known him most of my adult life.

Ms. Naughton. Did he help you at all when he came to law school?

Mr. Ingram. Yes, back in the time when I went to law school, he did. He loaned me money to go to law school, a loan which helped me to go to law school, which was repaid.

Ms. Naughton. And did he also help you financially in your political campaigns?

Mr. Ingram. He may have assisted with a campaign contribution in the first race that I ran, yes.

Ms. Naughton. When you say he may have, did you know he was contributing? Did he do it anonymously?

Mr. Ingram. Yes, yes. He didn't do it anonymously. He did.

Ms. Naughton. He did help?

Mr. Ingram. Yes.

Ms. Naughton. Have you ever done any legal work for Mr. Fairchild?

Mr. Ingram. Yes.

From the time I began my law practice until two or three years ago, I frequently represented Mr. Fairchild and his companies on a number of matters.

Ms. Naughton. What kind of work did you do for Mr. Fairchild?

In other words, was it the construction business, the oil business, a little of both?

Mr. Ingram. Construction business.

Occasionally, I do work for him in the oil business and the other entities which he was involved in.

Ms. Naughton. Could you tell us from approximately what years you did work for Mr. Fairchild?

Mr. Ingram. From 1967 to probably 1984. I suspect those would be the years. And I, that was not continuous from those times. There were some of those years when I perhaps did not do legal work for him.

Ms. Naughton. After 1984, did you have any sort of falling out or—why did you terminate doing work for him?

Mr. Ingram. Well, in the—in this investigation, when this investigation occurred, of course I have not had any further contact with Mr. Fairchild other than a couple of telephone calls or something of that nature during that time.

Ms. Naughton. Why do you say of course? Why not?

Mr. INGRAM. Well, I think Mr. Fairchild had some thoughts and opinions about this particular matter that is before the committee now that certainly were contrary to mine.

We had a difference of opinion about that.

Ms. NAUGHTON. Would one of those be his suspicion early on in the handling of his son's case that show you and Bud Holmes were acting to, in concert to, "blackmail" him or get him to pay money?

Mr. INGRAM. I never knew that until the grand jury hearings and all of this investigation.

Of course, that is absolutely ridiculous. There is no truth whatsoever to that fact, or to that statement.

Ms. NAUGHTON. I want to ask you a little bit about the Fairchild Company.

In your experience, is that a partnership?

Mr. INGRAM. Yes, it is a limited partnership.

Ms. NAUGHTON. The partners are basically family members of the Fairchild family?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. Now, do you know a Bud Holmes?

Mr. INGRAM. Yes, I do.

Ms. NAUGHTON. How long have you know Mr. Holmes?

Mr. INGRAM. Since 1967. Since I began practicing law.

Ms. NAUGHTON. And how do you know him?

Mr. INGRAM. Well, he was a lawyer in our town and a member of the bar and a very active lawyer in our town. I knew him. He was on the other side of cases of me.

I suppose probably in that 20 years, we may have even been on the same side of a case or two or something. His offices were across the street from mine.

Ms. NAUGHTON. That is when he was district attorney, was his office next to you?

Mr. INGRAM. Sure.

Ms. NAUGHTON. Across the street from you.

Mr. INGRAM. When he was district attorney, I believe his offices were up in the law enforcement complex, which was not across the street from mine. But his civil law practice office was across the street from mine.

Ms. NAUGHTON. Do you know Judge Walter Nixon?

Mr. INGRAM. I surely do.

Ms. NAUGHTON. How long have you known Judge Nixon?

Mr. INGRAM. Since 1967.

Ms. NAUGHTON. Since you began practicing law?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. Did you know him as an attorney before he became judge?

Mr. INGRAM. I did not

Ms. NAUGHTON. Had you practiced in his court over the years?

Mr. INGRAM. You bet, yes.

Ms. NAUGHTON. Do you have any idea of how many cases?

Mr. INGRAM. No, but several. I appeared in his court probably two or three times a year down through the years.

Ms. NAUGHTON. Ever try any cases in is courtroom?

Mr. INGRAM. Yes, I have.

Ms. NAUGHTON. What would your opinion be of Judge Nixon as a jurist?

Mr. INGRAM. I think he was an excellent judge.

Ms. NAUGHTON. Do you think he was fair?

Mr. INGRAM. Yes.

Ms. NAUGHTON. Would you occasionally socialize with Judge Nixon?

Mr. INGRAM. Yes.

Ms. NAUGHTON. How did that come about?

Mr. INGRAM. As I practiced law down through the years, I got to know Judge Nixon as I had contact with him in the courts. When I was in the Senate, Judge Nixon is a very active sportsman, interested in sports and conservation laws and other issues that come before the state, and I had an opportunity to visit with him from time to time relative to those matters and developed a friendship with him.

Ms. NAUGHTON. Did Judge Nixon ever complain or mention his financial situation in that, as a Federal judge making less money than he could have in private practice?

Mr. INGRAM. Yes, he did. He did discuss that with me, and that was a matter of concern with him. He, I think, was genuinely interested in providing for his family and providing for what he considered to be his needs to be. There were limitations with respect to his income from his judge's salary. And I think that he felt a need to have outside investments.

Ms. NAUGHTON. Prior to the time when, as we have heard, he asked you to ask Mr. Wiley Fairchild to put him in an oil investment. Prior to that time did you discuss what investments Judge Nixon had made?

Mr. INGRAM. I don't think in any particular detail. That does not mean that he and I may not have discussed something he was involved in at that particular time. I don't have a memory of a particular instance I could give you right now. But it certainly would not be uncommon for him to have done that.

Ms. NAUGHTON. Did you ever discuss with him oil investments he had made basically off the street?

Mr. INGRAM. Yes.

Ms. NAUGHTON. What does that mean, purchasing off the street?

Mr. INGRAM. To me, maybe that is a term that I had used in the past when you purchase oil investments off a street. That is at a retail, very high risk, I would say almost certain to have on return.

Ms. NAUGHTON. Why is that?

Mr. INGRAM. Those deals that are peddled on the street are just highly speculative. And they are not always based on sound information and business judgment.

Ms. NAUGHTON. Did Judge Nixon mention he made several of these kinds of purchases?

Mr. INGRAM. I don't know that he mentioned he made several of them. Judge Nixon mentioned to me that he had made some investments. I don't know about several of them, but some, yes.

Ms. NAUGHTON. And they had not turned out well?

Mr. INGRAM. I think I have that sense, yes, that they had not turned out well.

Ms. NAUGHTON. All right. Did he say of these off-the-street investments, so we know the subject we are dealing with, did he say whether or not he had borrowed money to invest in these projects?

Mr. INGRAM. I don't recall.

Ms. NAUGHTON. Did there come a time when he specifically asked you if you would approach Wiley Fairchild about putting him in an oil deal?

Mr. INGRAM. He inquired of me if I would ask Mr. Fairchild to give him an opportunity to make an oil investment, yes, he did.

Ms. NAUGHTON. Do you recall when his conversation took place?

Mr. INGRAM. I don't recall specifically when it took place, but I believe it took place late sometime in 1979, perhaps early 1980.

Ms. NAUGHTON. What causes you to date that? Is there any external reason?

Mr. INGRAM. I believe that I was still in the Senate at that time. 1979 was my last year in the Senate.

Ms. NAUGHTON. Could you tell us how this conversation came about? Do you recall what you were doing when you had the conversation?

Mr. INGRAM. No, I don't. I believe that, if you check my earlier testimony in the trial, that I was in Jackson when the conversation took place. But I am not even absolutely positive of that. But I think that was my judgment at the time of the trial.

Ms. NAUGHTON. Had you previously discussed your work for Wiley Fairchild or anything about Mr. Fairchild's business?

Mr. INGRAM. Very well could have. I think it was very generally known that I represented Mr. Fairchild and his entities, his companies, and his interest. Mr. Fairchild is a very high profile businessman and person in our community. So I think it was generally known that I did that.

Ms. NAUGHTON. When you say Mr. Fairchild was a high profile person, was he known to be successful in the oil business?

Mr. INGRAM. Yes, indeed.

Ms. NAUGHTON. When you say, yes, indeed, could you elaborate on that a little more?

Mr. INGRAM. Just that. He was known to be successful in the oil business.

Ms. NAUGHTON. Did you and Judge Nixon discuss that, that Mr. Fairchild was known to be successful?

Mr. INGRAM. Perhaps we did. I don't remember specifically that that was a topic of conversation, but we probably did.

Ms. NAUGHTON. Was it you who first raised Mr. Fairchild's name to Judge Nixon, or did Judge Nixon ask you about Mr. Fairchild?

Mr. INGRAM. Judge Nixon asked me about Mr. Fairchild.

Ms. NAUGHTON. So you did not volunteer that you could put him in a deal with Mr. Fairchild?

Mr. INGRAM. No. My recollection and belief is that Judge Nixon asked me about the possibility of that.

Ms. NAUGHTON. At this first mention, this first conversation, did Judge Nixon mention whether or not he wanted a certain amount or how he was going to pay for it, anything like that?

Mr. INGRAM. I think that Judge Nixon did mention that he wanted to make an investment in the area of $10,000 that he felt like that he could make financial arrangements through borrowings to do that.

Ms. NAUGHTON. Would that be at a bank?

Mr. INGRAM. Yes.

Ms. NAUGHTON. Did he mention which bank?

Mr. INGRAM. He may very well have. I don't recall specifically that. It seems at the time he did mention a bank. Maybe I have somewhere in my testimony I have said maybe which bank it was. But I had the idea that he was going to make a borrowing from the bank, yes.

Ms. NAUGHTON. When he asked to be put in an investment, did he specifically ask for an interest in oil wells or specifically ask for any type of acreage?

Mr. INGRAM. No, he did not. I think that he was interested in making an investment in the oil royalties.

Ms. NAUGHTON. Did you discuss whether he wanted to buy a working interest or royalty interest?

Mr. INGRAM. No, I did not. I didn't have the idea that he was sophisticated enough to be talking about a working interest or some other interest that would expose him to great liability. I believe a working interest would expose you to considerable liability.

Ms. NAUGHTON. Was he asking whether or not judge—excuse me—Wiley Fairchild would convey interest to him or simply put him in as a partner in a working interest? I am trying to get an idea of how specific this was.

Mr. INGRAM. I don't think that there was that much specifics involved. I think the matter was simply that he had knowledge and confidence that Mr. Fairchild was successful in this area and that he would like an opportunity to make investments. I think some of his colleagues were likewise making investments in the oil industry in our particular area of the state.

I got the idea that he wanted to have an investment in oil royalties or mineral interests.

Ms. NAUGHTON. One of his colleagues, would that be Judge Russell?

Mr. INGRAM. Well, Judge Russell is one of his colleagues, Yes.

Ms. NAUGHTON. Was he known to have successful oil investments?

Mr. INGRAM. I think so, yes.

Ms. NAUGHTON. Did Judge Nixon mention that to you?

Mr. INGRAM. Yes.

Ms. NAUGHTON. Did Judge Nixon mention to you that he tried to get into an oil deal with the oil man that had gotten Judge Russell into oil deals?

Mr. INGRAM. I don't recall that.

Ms. NAUGHTON. When you say you don't recall that, is it your recollection he didn't say that or he could have, but you don't recall?

Mr. INGRAM. You know he very could have. That is eight or nine years ago. I don't remember testifying to that in the trial. If I did, we need to look at my trial transcript. That would probably be a more accurate judgment and assessment of that.

Ms. NAUGHTON. Was it your sense from what Judge Nixon was asking you was that it was basically going to be up to Wiley Fairchild to decide the nature of the investment and to pick what properties he thought that Judge would do well in?

Mr. INGRAM. Yes.

Ms. NAUGHTON. So the Judge wasn't asking for any specific well or any specific acreage?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. Was he requesting any specific number of wells?

Mr. INGRAM. No, he didn't request wells. He talked about having an oil investment, so he wasn't requesting specifics

Ms. NAUGHTON. Now, did he mention whether or not he knew that the Fairchild Company was privately held; that is, a partnership that one could buy into?

Mr. INGRAM. I don't think he anticipated buying into any company or anything of that nature. That is just totally outside of the realm of the nature of the situation. I mean you are talking about possibly buying a few acres of royalty or a few acres of minerals, which is commonly done in our area. You don't buy into the company.

Ms. NAUGHTON. Let me ask you this: Based on your knowledge, was Mr. Fairchild in the business of selling mineral interests?

Mr. INGRAM. Yes, he was.

Ms. NAUGHTON. To whom?

Mr. INGRAM. To anybody that he felt he could make a profit on or make a reasonably good business deal on. Now, he did not sell minerals to the street. He didn't sell minerals to the public. So I am not conveying that idea. But, yes, I mean he entered into all kinds of mineral and royalty and working interests, even drilling interests.

He drilled his own wells and did his—so, you bet, he conveyed and sold to many entities throughout the country, oil interests.

Ms. NAUGHTON. He would sell for the sake of anything else, let's call them investors into working business who would provide, I assume, capital for drilling, right? But what I want to know was was he in the habit of selling royalty interests to people in arm's length——

Mr. INGRAM. He did not ordinarily sell to the public. He didn't have a store to sell royalty interests public. So, I am not conveying that. But there were a number of business people, a number of associates, acquaintances, entities, relations, affiliates that he sold mineral interests to.

Ms. NAUGHTON. Would these people include public office holders?

Mr. INGRAM. I think that they very well could have, yes.

Ms. NAUGHTON. Do you know if Judge Nixon was aware of that?

Mr. INGRAM. I don't know. I know he is aware of that now, and I am having difficulty telling you what I know now as opposed to what I knew nine years ago or eight years ago.

Ms. NAUGHTON. For instance, did he tell you I know Wiley put the mayor into a deal, or, the governor into a deal?

Mr. INGRAM. I don't recall that. He very well could have known that, but I don't think he and I sat there and discussed that.

Ms. NAUGHTON. Now, did you convey Judge Nixon's request to put him into an oil deal with Wiley? Did he convey that to Mr. Fairchild right way?

Mr. INGRAM. I did not right away, no.

Ms. Naughton. Why not?

Mr. Ingram. Well, I was somewhat reluctant to do that kind of on the spot about that, didn't know how Mr. Fairchild would react to that. I guess in a sense of procrastination I didn't get around to doing it right away, but I did later.

Ms. Naughton. When you say were reluctant and felt a little bit on the spot, could you elaborate on that?

Mr. Ingram. I feel any time you have a relationship with anyone and someone asks you to intervene in connection with that relationship, you feel on the spot about it. And I did in this instance. Judge Nixon, of course, is a public figure, a Federal judge.

Wiley Fairchild is a businessman, was a client of mine at that time and a relation of mine. I just simply felt on the spot about it.

Ms. Naughton. You, of course, were practicing before Judge Nixon in Federal cases?

Mr. Ingram. Yes.

Ms. Naughton. When he asked you to be put in these deals, if the deals had gone sour, did you feel that perhaps he may not look too kindly on you or your cases in the future?

Mr. Ingram. I did not feel that Judge Nixon would allow something like that to interfere with his judgment about a case. However, no one wants to put anybody in a deal that doesn't turn out well, whether it is Judge Nixon or anyone else.

You just feel a sense of, maybe a sense of responsibility. Maybe you are not entitled to feel that or you shouldn't feel that way, but perhaps you do. And I even talked to Judge Nixon about that even though I felt like Mr. Fairchild was the most successful person that I had ever known in the oil and gas business, that certainly there was risk even to that, that he was not buying something without risk.

Ms. Naughton. Did you ever feel, Mr. Ingram, anything—when you say felt on the spot, did you ever feel there was anything improper in Judge Nixon asking a lawyer who practices before him to put him into a profitable investment?

Mr. Ingram. I think, as I thought through the process, that I did not feel that there was anything improper about that.

Ms. Naughton. Why not?

Mr. Ingram. You just asked me how I felt about it. I said that I did not feel that there was anything improper about it, and I felt like, you know, I know Judge Nixon from experience, being before him in that courtroom, and in his relationships with me as a lawyer. You didn't cross the line with Judge Nixon.

Ms. Naughton. So based on your experience, you didn't think it was improper as opposed to just the objective fact of a judge asking a——

Mr. Ingram. The objective fact is I didn't think it was improper.

Ms. Naughton. How long was it, then, before you conveyed his request to Wiley?

Mr. Ingram. Several days or weeks.

Ms. Naughton. In your testimony, you testified on page 1031, "several weeks or possibly months."

Mr. Ingram. That would be accurate if that is my testimony. That would be accurate.

Ms. NAUGHTON. Between the time that the Judge asked you about the investments and the time that you asked Wiley about it, did the Judge repeat his request?

Mr. INGRAM. He did. He asked me if I had occasion to talk to Mr. Fairchild to convey his request. I am sure he did.

Ms. NAUGHTON. What did he say then?

Mr. INGRAM. I said I had not had an opportunity to do it yet.

Ms. NAUGHTON. Was that true?

Mr. INGRAM. Yes.

Ms. NAUGHTON. Were you stalling in any way, hoping this would sort of go away?

Mr. INGRAM. I don't think I would say that I was stalling. I just think I was procrastinating.

Ms. NAUGHTON. Did you ever try to avoid his telephone calls on this subject?

Mr. INGRAM. No, I didn't try to avoid his telephone calls on the subject. I don't understand, I don't know exactly where you are coming from about avoiding is telephone calls.

In the later time, I believe after this investment was made, there was some times that I may have done that.

Ms. NAUGHTON. Well, let's look at your testimony, then, Mr. Ingram. Did you bring it with you?

Mr. INGRAM. No, I did not.

Ms. NAUGHTON. OK. I believe I have an extra copy here.

Mr. INGRAM. Just read my testimony to me there.

Ms. NAUGHTON. OK. I will put this on the witness table.

Mr. INGRAM. Or just tell me what my testimony is, and that will be fine.

Ms. NAUGHTON. It is on page 1029. I will read along.

Mr. INGRAM. What testimony is that?

Ms. NAUGHTON. This is right after——

Mr. INGRAM. Is that trial testimony?

Ms. NAUGHTON. This is the trial testimony, yes. It is right after Judge has asked you to put him into a deal, but before you mentioned it to Wiley Fairchild.

Mr. INGRAM. OK.

Ms. NAUGHTON. The question was asked, basically what I asked you is if the Judge called you again to repeat the request, the question was, "How many such conversations were there?" You said, "There was more than one. I don't know how many there were, Mr. Weingarten, but there were more than one."

What is your best testimony on that?

Mr. INGRAM. My best testimony is there was more than one. Could I say several? I could say three or four. That would be something that would be reasonable.

Ms. NAUGHTON. Did you take all of Judge Nixon's calls at that time?

Mr. INGRAM. I am not sure I took all of his telephone calls at that time. I didn't at a later time. At that time, did you avoid his calls—did you read there where it said I didn't at a later time?

Ms. NAUGHTON. Yes, I did.

Mr. INGRAM. OK.

Ms. NAUGHTON. "And if I didn't avoid them, I knew that that was a part or the call that was coming, and I knew that I had not talked to Mr. Fairchild and I didn't have any news to give Judge Nixon."

Mr. INGRAM. That is right

Ms. NAUGHTON. "Is that in fact what happened?" Beg your pardon. "Did that, in fact happen, that you avoided the calls for that reason? I would say, yes."

Mr. INGRAM. Then that testimony is accurate, and I don't think that's different from what I was conveying to you I don't dodge telephone calls deliberately, but I didn't take calls—all the calls. And I knew when the calls came in that that was probably a subject that we would be discussing. And I knew I had not talked to Mr. Fairchild about it. I think that testimony there accurately describes the sense of what is there.

Ms. NAUGHTON. I take it there came a time that you did discuss the matter with Wiley Fairchild?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. Do you remember where that conversation took place?

Mr. INGRAM. It took place in his office. Mr. Fairchild's office.

Ms. NAUGHTON. When you approached the subject, to your best recollection, what did you say to Mr. Fairchild?

Mr. INGRAM. Well, the subject would have come up in a discussion of other business activities with Mr. Fairchild or other matters while I was there. I simply conveyed that Judge Nixon had and Mr. Fairchild said that he would be delighted to look for that opportunity and that was it.

Ms. NAUGHTON. When you said—when you said he said he would be delighted, do you remember with anymore specificity what Mr. Fairchild's reaction was?

Mr. INGRAM. No. I don't remember with more specificity than that.

Ms. NAUGHTON. When you told him who it was had approached you, did you say Walter Nixon or Judge Nixon?

Mr. INGRAM. Probably said Judge Nixon. That is how I referred to Judge Nixon is Judge Nixon.

Ms. NAUGHTON. I take it Mr. Fairchild knew Judge Nixon was a Federal judge?

Mr. INGRAM. I am sure he did.

Ms. NAUGHTON. Do you know if they had had any sort of relationship prior to becoming involved in this deal?

Mr. INGRAM. I don't know.

Ms. NAUGHTON. When you first told Mr. Fairchild about this, did you mention any certain amount of money that the Judge wanted to invest?

Mr. INGRAM. Yes. When we talked about it initially, we talked about there being $10,000 investment.

Ms. NAUGHTON. Do you remember discussing that amount with Mr. Fairchild specifically?

Mr. INGRAM. Yes, I did. Either then or shortly thereafter, because that would have been one of the items that, of course, Mr. Fairchild would want to have known is the realm of the investment.

Ms. **Naughton**. At that time, that first conversation, did Mr. Fairchild indicate what he was thinking of in terms of an investment, how many wells, which wells?

Mr. **Ingram**. No.

Ms. **Naughton**. Wasn't any specific——

Mr. **Ingram**. Could I stop the use of your term "wells"? There was not a—even a feeling that there would be an investment in wells. That there would be an investment in oil properties which would be either a mineral interest or a royalty interest. There wasn't any discussion about there being investment in oil wells.

Ms. **Naughton**. So when Mr. Fairchild—Mr. Fairchild never conveyed to you the terms of the Rogers well, the Wilkie well, the L.D. Ross well?

Mr. **Ingram**. No.

Ms. **Naughton**. As he has to this committee?

Mr. **Ingram**. No. As it turned out, later in the process, those properties were developed, but so far as I knew at the time that this investment was made, there was not a discussion of investment in developed properties.

Ms. **Naughton**. Is it your understanding then these properties hadn't had drilling on them?

Mr. **Ingram**. It was not my understanding whether they had drilling on them or they didn't have drilling on them. We talked in terms of royalty acres. Of minerals, minerals are royalty acres.

Ms. **Naughton**. When you say "we", do you mean Mr. Fairchild?

Mr. **Ingram**. Mr. Fairchild, yes.

Ms. **Naughton**. He never mentioned any particular wells to you?

Mr. **Ingram**. No, he did not. Not in the beginning, that is. After a year or so down the road, when division orders were prepared and things of that nature, yes. The properties then were identified as being a part of production.

Ms. **Naughton**. One step back for a minute. I want to ask you whether or not in terms of Mr. Fairchild's activity in political campaigns, contributions to political campaigns, when you were serving in the State senate—and I take it you said Mr. Fairchild had contributed to your first campaign; is that correct?

Mr. **Ingram**. Yes.

Ms. **Naughton**. Did you get the impression at the time that Mr. Fairchild expected you to help him out when you were in the Senate? That he could come to you for help?

Mr. **Ingram**. I think Mr. Fairchild expected you to help him whether he contributed to your campaign or not. I think that he on a lot of occasions had reason to call on various political interests in the State on behalf of things he was interested in.

Sometimes they were public interest matters. Sometimes they were individual interest matters. But when he contributed to my campaign in 1971, there was not any indication that I am making this contribution to you and that I want you to do a specific favor for me.

Absolutely not. I would not have accepted a contribution under those terms.

Ms. **Naughton**. Did he ever ask you any favors while you served in the State senate?

Mr. **Ingram**. Well, we need to describe what favors are. OK?

If we are talking about favors being was he interested in oil and gas legislation that was before the senate, perhaps yes. But he would have that same interest that someone else had. Not just an individual interest to do something.

If we are talking about favors, doing something off-color, or shady or underhanded, he never asked me to do anything of that nature. And I would not have.

Ms. NAUGHTON. I am not insinuating that he did or didn't.

Mr. INGRAM. When you say—when you talk about "favors to me", I want to know are we talking about—I consider—I ask my Congressman for favors. Called up a couple of weeks ago and asked my Congressman if he could get my brother a pass to go visit the White House. That is a favor.

So—I consider nothing wrong with that. But if we are talking about—if we are talking about a favor that casts some cloud or some doubt or some suspicious action, then I want to identify that with you as we talk.

Do you follow me?

Ms. NAUGHTON. No; I do follow you.

Mr. INGRAM. OK.

Ms. NAUGHTON. Mr. Fairchild testified before us that he only contributed—that he contributed with the idea of getting good government and hoping that people could help and if it was a reasonable request, that he would hope that they would do so.

Do you have a quarrel with that?

Mr. INGRAM. I don't have a quarrel with that. In connection with what he did, relative to my campaign in 1971, and the facts are I think that—I am trying to recall the contribution that was made in 1971 to my campaign. It was very nominal. It was not something of any great significance.

Ms. NAUGHTON. Do you recall at any time while you were representing Mr. Fairchild any discussion of filing an action against an oil company and the discussion centering around if you should take it to Federal or State court and if you could possibly draw Judge Nixon as a judge?

Mr. INGRAM. No.

Ms. NAUGHTON. Was there any type of discussion?

Mr. INGRAM. No.

Ms. NAUGHTON. In putting Judge Nixon into the oil deal, do you know whether or not Mr. Fairchild ever considered that he could get cases before Judge Nixon?

Mr. INGRAM. To my knowledge, he did not.

Ms. NAUGHTON. The two were never connected in your mind?

Mr. INGRAM. Absolutely. Never.

Ms. NAUGHTON. Did you—after you discussed this with Mr. Fairchild—by the way, did—when you discussed Judge Nixon's request with Mr. Fairchild, did he take a long time to consider what you were asking or did he readily agree?

Mr. INGRAM. Readily. Said immediately in that conversation that he would be glad to do that.

Ms. NAUGHTON. Did he say why?

Mr. INGRAM. No. He didn't say why.

Ms. NAUGHTON. Were you surprised at that?

Mr. INGRAM. No. Not at all.

Ms. **Naughton**. Why not?

Mr. **Ingram**. Well, it was a request I passed on. And he made the judgment. That wasn't something I—he could have very well said no, he wasn't interested in doing that. I wouldn't have been surprised about that.

Ms. **Naughton**. Did you get the impression, Mr. Ingram, at any time from Mr. Fairchild that he was doing this just as a favor to you or because you had asked?

Mr. **Ingram**. No.

Ms. **Naughton**. Did you get the impression that he was doing it just to put you in a more favorable light with the judge?

Mr. **Ingram**. Absolutely not.

Ms. **Naughton**. When you presented it to Mr. Fairchild, did you—I am asking you, I guess, did you advocate that he do it, did you just mention it, or did you convey that it wasn't your concern or you did——

Mr. **Ingram**. I did not advocate that he do it. I simply stated the request that had been made. He made the judgment that he was willing to do that. That he had no objection to doing that, that he was delighted to do it, glad to do it. There was just really not any question about it.

Ms. **Naughton**. Now as I know, and we will get to this later, two of the conveyances at least came from W.R. Fairchild Company. Did you need to go to anybody else in the partnership to get this agreement to go ahead?

Mr. **Ingram**. I didn't talk to anybody else in the partnership.

Ms. **Naughton**. Was it just a practical matter that Mr. Fairchild ran the partnership?

Mr. **Ingram**. I think that Mr. Fairchild makes a decision, it is made.

Mr. **Edwards**. I think this would be an appropriate time to recess for lunch.

We will try to begin at about one o'clock.

Thank you.

[Whereupon, at 12 o'clock noon, the subcommittee recessed, to reconvene the same day at 1:00 p.m.]

Mr. **Edwards**. The subcommittee will come to order.

Ms. Naughton, you may proceed with questions for Mr. Ingram.

Ms. **Naughton**. Thank you, Mr. Chairman.

Mr. Ingram, before we broke, we were discussing Judge Nixon's request of you that you speak to Wiley Fairchild about putting him in an oil deal and Mr. Fairchild's subsequent positive reaction to that. Did you convey what Wiley Fairchild told you he would do to Judge Nixon?

Mr. **Ingram**. Yes.

Ms. **Naughton**. Do you remember how soon after?

Mr. **Ingram**. In just a matter of course. Probably not the same day, but a day or two after that, something like that.

Ms. **Naughton**. Do you remember what you told Judge Nixon?

Mr. **Ingram**. Just told him that I had spoken to Mr. Fairchild and that Mr. Fairchild had given the response he did. And——

Ms. **Naughton**. Did you tell the Judge that Mr. Fairchild said he would be pleased to put him in the deal?

Mr. **Ingram**. Sure. Yes.

Ms. NAUGHTON. Did you discuss with Judge Nixon what the structure of the deal would be or what he would be investing in?

Mr. INGRAM. No. I didn't at that time. I do not know what the investments would be.

Ms. NAUGHTON. What was Judge Nixon's reaction when you told him?

Mr. INGRAM. I think it was a reaction that he was pleased about it.

Ms. NAUGHTON. Do you remember what he said?

Mr. INGRAM. No, I do not.

Ms. NAUGHTON. What would the next step be? What were you expecting to happen?

Mr. INGRAM. I was expecting to have a communication from Mr. Fairchild either to myself or to Judge Nixon as to what the investment would be.

Ms. NAUGHTON. Did you get such notification?

Mr. INGRAM. I did, yes.

Ms. NAUGHTON. Do you remember how long between when Mr. Fairchild said he would put him in the deal until Mr. Fairchild contacted you and told you what he has chosen as investments?

Mr. INGRAM. No. I don't remember exactly how long that was, but sometime after that, some weeks or months after that.

Ms. NAUGHTON. I believe in your trial testimony, page 1036, you said some few months?

Mr. INGRAM. That would be correct, yes.

Ms. NAUGHTON. And what did Mr. Fairchild tell you when he described what he had picked out as investments for Judge—

Mr. INGRAM. He called me and told me on the telephone that he had three particular properties which he thought were good investments for Judge Nixon; that—and he gave me the identity of the properties, and acreage that was there. I jotted them down on a note pad.

Ms. NAUGHTON. before he gave you the actual information, the acreage on the properties, did he preface his remarks in any way like "These are good properties, they are bad properties, they are—I don't know what is happening with them"? "They haven't been tested yet"?

Mr. INGRAM. No. He did not discuss that with me.

Ms. NAUGHTON. Was this over the telephone?

Mr. INGRAM. Yes.

Ms. NAUGHTON. You say you jotted down the legal descriptions.

Mr. INGRAM. I don't think I jotted down the legal description. I think I—I think I made a note of the county, the location, and I may have made a note of the section where the properties were located, but not the detailed legal description, I did not.

Ms. NAUGHTON. And I gather then you did not write down the name of any particular well?

Mr. INGRAM. No.

Ms. NAUGHTON. Because Mr. Fairchild did not tell you any particular well names?

Mr. INGRAM. No. He gave me that there would be three acres in Marion County and three acres in Mobile County, and I think I didn't distinguish that being a county at the time. Ordinarily, we think of Mobile as a city, 100 miles away from us. And I think it was five acres in Covington County.

So I wrote that down on a little note pad that is by my telephone, and then I called Judge Nixon. Now whether or not I called him that day or some other day, but I told Judge Nixon what the investments were.

Ms. NAUGHTON. When you told him what the investments were, did you characterize them in any way?

Mr. INGRAM. I characterized them as investments in royalty properties, and I think I did characterize them in terms of—I'd gotten the idea that perhaps the Covington County property was not as hot an area or as good an area, maybe, as the other areas were; so I think maybe I conveyed that to Judge Nixon. I believe I did.

Ms. NAUGHTON. Was it your understanding, then, that that is why that property, the Covington County, was being assigned five acres as opposed to three as the other two had been?

Mr. INGRAM. No. It wasn't my understanding. Mr. Fairchild assigned the acreage. I didn't.

Ms. NAUGHTON. What did you do with the piece of paper that you wrote this information on?

Mr. INGRAM. It stayed on my credenza by my telephone for a while. Then I put it in my desk drawer, I think in the middle desk drawer, kept it there for a while, and as I do a lot of other notes. In a law office you—it's unbelievable the telephone notes you get in a law office, and you keep them for a while, and then they are—just discarded.

Ms. NAUGHTON. Once the investigation started and it was apparent that the Federal Government wanted to look into this transaction, did you look for that piece of paper?

Mr. INGRAM. I did, yes.

Ms. NAUGHTON. Did you find it?

Mr. INGRAM. No, I did not.

Ms. NAUGHTON. I gather you did not actually give anything to Judge Nixon? You merely conveyed it verbally?

Mr. INGRAM. Just told him what it was.

Ms. NAUGHTON. Now did you at that time—now that you had three properties picked out, did you at that time assign how much of his investment would be allocated to each of those properties of the $10,000 that he was planning on investing?

Mr. INGRAM. I don't remember if I did—if that was assigned at that particular time. I think somewhere around that time, we had—Mr. Fairchild and I had some discussions about the values of those properties. But I don't remember exactly when that discussion took place; but that was—those properties represented his investment of $9,500.

Ms. NAUGHTON. When you and Mr. Fairchild then discussed at some time later what the value, relative value of them were, because the notes, as we know, eventually ended up being $2,000, $3,000 and $4,500——

Mr. INGRAM. That is correct.

Ms. NAUGHTON. —you arrived at that evaluation based on what Mr. Fairchild told you?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. What did he tell you about them and how to assign them?

Mr. INGRAM. I think that he—that in his mind he had made a judgment about what—about what the values of the properties were. I had no way to make a judgment about them. I didn't know what was on the properties. You know, I had never seen any information about the properties; so that was outside of my ability to make a judgment about that.

Ms. NAUGHTON. Did Mr. Fairchild indicate to you how much he thought they were worth?

Mr. INGRAM. Yes. I believe he did. And in the sense of arriving at the value of the properties. That is how I got the values of the property, was from Mr. Fairchild.

Ms. NAUGHTON. Did he ever indicate to you that on the open market that if he had sold to a stranger at arms length that he may have charged more for the properties?

Mr. INGRAM. No, indeed. He did not. In fact, on the conveyance of those properties, it was my complete understanding that Judge Nixon was being charged a full, fair value for those properties. In fact, I think Mr. Fairchild—I did not know it at the time, but I think his price of those properties to Judge Nixon far exceeded what he paid for the properties.

Ms. NAUGHTON. Well, he had also invested, had he not, in the working interest in the Wilkie Well?

Mr. INGRAM. I don't know about that.

Ms. NAUGHTON. You don't know how much money he poured into the project before—

Mr. INGRAM. I have no earthly idea about any of that. It was just my understanding, from conversations with Mr. Fairchild, that that exceeded considerably what he had paid for the properties. That was a fair value for those properties.

Ms. NAUGHTON. Did he tell you what the status was in terms of drilling on those properties?

Mr. INGRAM. No, he did not. Not at that time. Later, much later, I did learn of the status of it.

Ms. NAUGHTON. Why don't you tell us about that.

Mr. INGRAM. Beg your pardon?

Ms. NAUGHTON. Why don't you tell us about that.

Mr. INGRAM. Later when they were preparing the division orders and that sort of thing, then I learned about the activity on the property.

Ms. NAUGHTON. Well, why don't we date it then, say, before the deeds were actually prepared, in or about February of 1981, were you made aware by Mr. Fairchild of the status of the wells drilled on those properties?

Mr. INGRAM. No. No. No. I was not.

Ms. NAUGHTON. Did you ever look it up at any recorder's office?

Mr. INGRAM. I surely did not. That just was not my duty or responsibility or anything. I simply conveyed a request to Mr. Fairchild. He conveyed it back to me. I had no responsibility whatsoever to go and make a determination about what was there or what wasn't there. No one ever put me in that position or that responsibility to do that. I didn't ever accept that responsibility.

Ms. **Naughton**. Did Mr. Fairchild ever ask you to prepare the deeds?

Mr. **Ingram**. No, he did not.

Ms. **Naughton**. Did there come a time when you understood that he had expected you to?

Mr. **Ingram**. I don't believe so. I—it is my recollection that Mr. Fairchild prepared the deeds, they came to my office from his office prepared, and I was not expected to prepare them. I would have prepared them had he asked me to, even though he has a staff of lawyers. He has oil and gas lawyers that are on his—in his company and outside of his company, and he had the resources and the wherewithal to do that a whole lot more expeditiously than I could.

Ms. **Naughton**. Mr. Ingram, if I were to tell you that Mr. Fairchild testified here before the subcommittee that he had expected you to do the deeds, is that—I gather that does not comport with your recollection?

Mr. **Ingram**. It absolutely does not. I think he is mistaken about that. If he expected me to prepare the deeds, then he didn't ever express that to me. Do you follow me? He did not say that to me. If he expected that in his mind, he did not communicate that to me.

Ms. **Naughton**. However, the deeds, when they were prepared in or about February of 1981, were sent to you?

Mr. **Ingram**. Yes.

Ms. **Naughton**. Were they not?

Mr. **Ingram**. They were.

Ms. **Naughton**. Do you know why they were sent to you?

Mr. **Ingram**. I assume they were sent to me to deliver to Judge Nixon.

Ms. **Naughton**. Copies of them?

Mr. **Ingram**. No. The actual deeds were—the original deeds were sent to my office. Came to my office in an envelope.

Ms. **Naughton**. For you to physically carry them to Judge Nixon?

Mr. **Ingram**. That is correct.

Ms. **Naughton**. They did not require his signature?

Mr. **Ingram**. No, they did not, but they were his property. They were his evidence of his property, and they were to be delivered to him.

Ms. **Naughton**. Was it your understanding that you were to record them?

Mr. **Ingram**. No. It really wasn't my understanding that I was to record them. I think, after I took them to Judge Nixon, whether Judge Nixon asked me to record them or I volunteered to record them, more than likely what happened was after I took them to him and delivered them to him, I probably said to him, "They need to be recorded, and I will record them." That's probably what I did.

Ms. **Naughton**. When you did record—I gather you took responsibility for recording the deeds?

Mr. **Ingram**. Yes.

Ms. **Naughton**. When you did record them, who paid the recording fees?

Mr. **Ingram**. I really think my office did. And I don't know whether or not that billing went back to Mr. Fairchild on an expense billing or not. We never did check that out, you see the recording expense is fairly normal. It's not anything of any significance.

Ms. NAUGHTON. I gather, Mr. Ingram, you were at this time not representing Mr. Fairchild in this transaction?

Mr. INGRAM. I did not consider myself to be representing Mr. Fairchild. I did not consider myself to be representing Judge Nixon as a lawyer at all in the transaction at all. Had that been the case, then I would have taken more responsibility for that, but I wasn't engaged to do that.

Ms. NAUGHTON. When you wrote to Getty Oil Company after the deeds had been filed and the money was ready to come in from that well, the Rogers well, which went on line in April of 1981, were you working on Judge Nixon's behalf?

Mr. INGRAM. No, I wasn't. In fact, Mr. Fairchild, when it came time to prepare the division orders, Mr. Fairchild wanted the—that responsibility of the division orders to be on the oil company, whichever it was, Getty, if that's the case. And I don't blame him. That's a lot of recordkeeping and a lot of bookkeeping to go through all of that. And so he asked me to—Mr. Fairchild said to communicate with Getty, send them copies of the deed so they cold do that.

Ms. NAUGHTON. Again, did you understand why he was asking you to do that inasmuch as his office had prepared the deeds, were doing the bookkeeping, and could have handled that?

Mr. INGRAM. No, I do not, except for the fact that the deeds had ben delivered to me. I didn't consider that to be an unusual request or anything out of the ordinary.

Ms. NAUGHTON. And you did that mainly just as a convenience to Mr. Fairchild?

Mr. INGRAM. Sure.

Ms. NAUGHTON. When was it decided, Mr. Ingram, Mr. Fairchild would carry the promissory notes from Judge Nixon for the investment?

Mr. INGRAM. At some of the times when there was a discussion about the—about the investment and about the deeds being prepared or the instruments being prepared, we discussed the fact that Judge Nixon would have needed to have advance notice so he could prepare his financial arrangements to take care of the investment; and during one of those discussions, then Mr. Fairchild said that he would carry the note.

Ms. NAUGHTON. And you said this is around the time that papers were being prepared, is that right?

Mr. INGRAM. That's correct.

Ms. NAUGHTON. So this would have been around January or February of 1981?

Mr. INGRAM. I would think so, yes.

Ms. NAUGHTON. Was it Mr. Fairchild's idea to carry the notes or was it a suggestion of yours, or was it a request of Judge Nixon?

Mr. INGRAM. Judge Nixon did not request Mr. Fairchild to carry the notes. I really believe that it was at the suggestion of Mr. Fairchild. That is not unusual for Mr. Fairchild in the way he did business with his associates.

Ms. NAUGHTON. Let me back up for a minute. Was it always contemplated from the beginning that there would be written notes, or did Mr. Fairchild simply say that he would carry on his books what Judge Nixon owed him?

Mr. INGRAM. I think—I don't think there was a real detailed discussion about whether or not there would be written notes or not. I think it is fairly customary for Mr. Fairchild to carry those type of transactions as entries on his books. Not always does he have a note. Many times he does. And so I don't think that there was a great deal of concern about that or a great deal of discussion and agreement about that.

Ms. NAUGHTON. Did there come a time at which you suggested that written notes be prepared?

Mr. INGRAM. I determined—when i got into all of this investigation to try to put together the facts—I determined that I probably did say to Mr. Fairchild that the notes needed to be prepared.

Ms. NAUGHTON. Was there a reason in your thinking in terms of preparing written notes as opposed to simply letting Mr. Fairchild carry it as a debt on his books?

Mr. INGRAM. I guess maybe just my thinking as a—in the course of business. It's my thinking it's good to have notes if you owe a debt. Most of the time when I go to a bank or anywhere else, you would sign a note.

I signed a note to Mr. Fairchild myself in the early beginnings of my career, you know, so——

Ms. NAUGHTON. Did Judge Nixon request that notes be prepared?

Mr. INGRAM. No, he didn't.

Ms. NAUGHTON. Did Judge Nixon ever suggest to you that he needed notes because of financial disclosure statements that he had to prepare?

Mr. INGRAM. I do not believe that he did to me. That may—might have been a requirement of his, but I don't think that was expressed to me. I think that the notes were prepared and taken to Judge Nixon and he signed them, because they evidenced the debt which he owed.

Ms. NAUGHTON. Do you recall, did you ever tell Wiley Fairchild or anyone in his office that notes needed to be prepared because Judge Nixon had to report it on his financial disclosure statement?

Mr. INGRAM. I don't think I did. I just don't think there was any discussion about the notes. I think that everybody assumed that was an appropriate thing to do, was to do the notes. I don't think—no one ever asked me why in the world are you preparing notes. Nobody said that. Everybody assumed if you have a debt, a note is appropriate.

Ms. NAUGHTON. Who set the rate, the interest rate, on the notes?

Mr. INGRAM. Mr. Fairchild.

Ms. NAUGHTON. Do you recall that conversation?

Mr. INGRAM. Not in detail I don't recall that conversation, but in setting the terms of the notes, then that would have been the—what we would have done. I would not set the interest rate on my own.

Ms. NAUGHTON. Would you have perhaps set the interest rate on your own and then sent it to him for approval?

Mr. INGRAM. I could have done that, but I suspect I did not do that.

Ms. NAUGHTON. So your best impression is that you got the rate of 10 percent from Mr. Fairchild?

Mr. INGRAM. Yes.

Ms. NAUGHTON. Now, Mr. Ingram, you are familiar with banking practices, certainly?

Mr. INGRAM. Yes.

Ms. NAUGHTON. You are in the banking business also, as well as a law office?

Mr. INGRAM. Yes, I am.

Ms. NAUGHTON. Do you know what the prevailing interest rate on a personal loan would have been in 1981?

Mr. INGRAM. I don't recall at all what it would have been.

Ms. NAUGHTON. If I said between 14 and 15 percent, would you agree with that statement?

Mr. INGRAM. I wouldn't disagree with that statement. If you say that's what it is, then that's fine. I don't know that.

Ms. NAUGHTON. Was there any discussion of whether or not this loan should be secured?

Mr. INGRAM. No, there was no discussion of that.

Ms. NAUGHTON. Why not?

Mr. INGRAM. Well, I think that Mr. Fairchild assumed that any person that he was dealing with of the character and ability of the person he was dealing with was worth $10,000 or $9,500, whether it was secured or not, he'd be paid. I mean, but there just was no discussion. That's supposition on my part. There wasn't a discussion about whether or not it would be secured. That's a judgment on my part.

Ms. NAUGHTON. All right.

Was it your judgment not to secure the note with the mineral interests themselves, as one would a house mortgage?

Mr. INGRAM. It was not my judgment. I didn't make a judgment about that.

Ms. NAUGHTON. Who set the three-year payment term?

Mr. INGRAM. I would assume that Mr. Fairchild set that in the discussions that we had.

Ms. NAUGHTON. Did he give you a reason for setting three years?

Mr. INGRAM. No.

Ms. NAUGHTON. And who set the term that the entire balance could be paid in February of 1983, that is, rather than a schedule of payments on the notes?

Mr. INGRAM. Mr. Fairchild set those terms.

Ms. NAUGHTON. Did Judge Nixon negotiate any of the terms of the notes with you or, to your knowledge, Mr. Fairchild?

Mr. INGRAM. Not with—not with me, he did not. If he discussed them with Mr. Fairchild, I don't have any knowledge of that.

Ms. NAUGHTON. So there wasn't any back and forth on the terms of the notes?

Mr. INGRAM. No. I think Judge Nixon thought that that was appropriate. Again, this is a judgment on my part. There wasn't a discussion about that. I think if Judge Nixon had objected to it, then I think he would have certainly said so. And I think that if Wiley Fairchild had objected to it—I mean, here is a substantial businessman who has made tremendous amounts of money, been very successful. So he has no problem in saying whether or not he agrees or disagrees with the terms of a deal.

Ms. **Naughton**. Would it be safe to say Wiley Fairchild is probably worth millions of dollars?

Mr. **Ingram**. Beg pardon?

Ms. **Naughton**. Wiley Fairchild is probably worth millions of dollars?

Mr. **Ingram**. I would certainly say that, yes.

Ms. **Naughton**. So $9,500 to him is a drop in the bucket; is that correct?

Mr. **Ingram**. That's correct.

Ms. **Naughton**. Do you recall when you prepared the notes?

Mr. **Ingram**. Prepared the notes after the deeds were delivered to me, and that would have been sometime probably February or March of 1981.

Ms. **Naughton**. I think we basically can agree that they were signed on February 25, 1981, by Mr. Fairchild?

Mr. **Ingram**. OK.

Ms. **Naughton**. And then sent to you.

Is it your recollection that after you got the deeds, you prepared the notes?

Mr. **Ingram**. Prepared the notes and took the notes and the deed to Judge Nixon.

Ms. **Naughton**. Together?

Mr. **Ingram**. Yes.

Ms. **Naughton**. If we could look for a minute at both the deeds and the notes—and they are at tabs 4 and 5 of the subcommittee's exhibit book, straight ahead of you.

Mr. **Ingram**. Do I need to look at them? I think I am familiar with them.

Ms. **Naughton**. Yes, please. For this question.

Mr. **Ingram**. What book do you want me to look at?

Ms. **Naughton**. That one, the one you have your hands on.

Mr. **Ingram**. All right. What tab?

Ms. **Naughton**. OK. We are at tab 4.

Mr. **Ingram**. All right.

Ms. **Naughton**. And tab 5.

If I could direct your attention to tab 4.

Mr. **Ingram**. OK.

Ms. **Naughton**. We have the final deeds as they were recorded. OK?

Mr. **Ingram**. All right.

Ms. **Naughton**. The first one is Mobile County, and it has to do with a deed from Wiley Fairchild Construction. This is the last page—second to the last page of the instrument, from—excuse me, W.R. Fairchild Construction Company to Walter Nixon; the second deed is the Marion County property from W.R. Fairchild Construction to Walter Nixon; and the third being the Covington County interest from Fairchild Windham Exploration Company—do you see that?—to Walter L. Nixon.

Mr. **Ingram**. OK.

Ms. **Naughton**. All right.

Now, if you go to tab 5 on the notes, we have three notes.

Mr. **Ingram**. Yes.

Ms. NAUGHTON. Correct me if I am wrong; they are identical with the exception of the amount of money to be paid?

Mr. INGRAM. OK.

Ms. NAUGHTON. All right. That is that Walter L. Nixon is agreeing to pay W.R. Fairchild Construction Company the money on all three notes, because all three notes are made payable to Fairchild Construction?

Mr. INGRAM. OK.

Ms. NAUGHTON. Now, in terms of the Covington County property, Mr. Ingram, which was a Fairchild Windham property conveyed to Judge Nixon, could you explain to me the discrepancy in the notes as opposed to the deed?

Mr. INGRAM. Well, you have a very closely held entity and the Fairchild entities and properties. The W.R. Fairchild Construction Company, Ltd., is usually the parent company of most all of the Fairchild entities, or many of the Fairchild entities.

Mr. Wiley Fairchild is the managing partner of that entity, and I suspect that I didn't even look at the deeds when I prepared the notes, that I knew that was the entity to make the notes to, and if there was a problem, a discrepancy—and I didn't even know there was a discrepancy until you just pointed it out to me today—that certainly Mr. Fairchild can make that adjustment inter-company without a first bit of problem.

Ms. NAUGHTON. So in other words——

Mr. INGRAM. It would not have mattered if you made the notes to Fairchild Windham, to Wiley Fairchild individually, or W.R. Fairchild Construction Company, Ltd. The company has the ability to make sure the money got to the proper place, whatever account it should go to.

Ms. NAUGHTON. Well, let's look at that a minute.

W.R. Fairchild Construction Company is a partnership with all the members of the family, or basically many nephews and nieces and brothers and sisters, correct?

Mr. INGRAM. Right.

Ms. NAUGHTON. Fairchild Windham, however, is a company whose interests are held 40 percent Wiley and 30 percent Rodney and 30 percent W.R. Fairchild; isn't that correct?

Mr. INGRAM. I think that's correct.

Ms. NAUGHTON. So money going to Fairchild Windham is owned in different—certainly different percentages than money going to W.R. Fairchild Construction; is that correct?

Mr. INGRAM. That's right.

Ms. NAUGHTON. And in preparing the notes—I take it you didn't notice the difference in preparing the notes?

Mr. INGRAM. No, I didn't. I really considered this a transaction between Mr. Wiley Fairchild and Judge Nixon, and that Mr. Wiley Fairchild would put the notes, make the assignment of the notes to whatever books, to whatever entity that it would need to go. It didn't occur to me that that would create any kind of discrepancy, no.

Ms. NAUGHTON. Is it possible that you could have prepared the notes substantially after the deeds were made?

Mr. INGRAM. No, I don't think it is. I believe the notes were prepared very shortly after the deeds were prepared to my office, and I delivered the notes and the deeds to Judge Nixon.

Ms. NAUGHTON. Is there any particular reason that you know of that Wiley Fairchild conveyed in the name of the construction company the mineral interests, as opposed to his own personal interests in the minerals?

Mr. INGRAM. None that I know of, no.

Ms. NAUGHTON. He never explained that reasoning to you?

Mr. INGRAM. I think after we recorded the instruments and then there was the issue of division orders, that that subject came up about the right entities and whether or not the conveyance was made out of the right entity.

But I tell you, whether or not the entity is W.R. Fairchild Construction Company, Ltd., whether or not it is Fairchild Windham, whether or not it is Wiley Fairchild, or Rodney Fairchild, if it is in any of those entities Mr. Wiley Fairchild has the ability and the power to cause it to flow to the right entities. You follow me?

They are basically—I am not saying they are one and the same, but I am saying that that is not a problem as I see it and as I know the Fairchild companies to be. And I guess I am not following the question. What concerns you about that?

Ms. NAUGHTON. I am here to ask the questions.

Mr. INGRAM. I know you are here to ask the questions, but if I could know the line you are trying to follow, what you are trying to develop—I just didn't see—I just don't see a problem with that.

Ms. NAUGHTON. I am not suggesting there is a problem. What the committee is trying to do is to understand the terms of this agreement When the documents don't match, it is good to know a reason why.

If your answer is that you weren't aware of the difference——

Mr. INGRAM. I wasn't.

Ms. NAUGHTON. That's fine.

Mr. INGRAM. And I want to state to you, as from day one, the first time I was ever asked about this transaction, until this day, I want to give whatever information I have that can be helpful to this committee or to anyone else to determine what the facts are.

Ms. NAUGHTON. Now, when you got the notes—when you made the notes, I take it you had Judge Nixon sign them?

Mr. INGRAM. Yes.

Ms. NAUGHTON. You left him a copy?

Mr. INGRAM. I am sure I left a copy.

Ms. NAUGHTON. And did you take a copy back for yourself or the original back for yourself?

Mr. INGRAM. I think I took the original back to my office.

Ms. NAUGHTON. What happened to the original of the notes?

Mr. INGRAM. It eventually got to Mr. Fairchild's office. I think that the original of the notes stayed at my office some time through, I think, an oversight on my part. I think I didn't transmit it back to the Fairchild office right away—the note right away. And something, an inquiry or something from the Fairchild office, maybe the bookkeeping office or something, prompted my transfer of those notes or my delivery of those notes back to Fairchild.

Ms. Naughton. So when you prepared the notes, Mr. Fairchild did not even see them; is that correct? You didn't send them to him first for his approval?

Mr. Ingram. I didn't send them to him—I don't think I sent them to him first for his approval.

Ms. Naughton. And then you didn't send it to him for some time later?

Mr. Ingram. Yes. A few weeks later or sometime later.

Ms. Naughton. Mr. Jarvis testified that—and he was the person doing the paperwork at Mr. Fairchild's office—testified that the notes did not get entered into the Fairchild books until 1982.

Would you quarrel with that statement?

Mr. Ingram. I would not know why the notes would not have been entered into the Fairchild books before that date, but now I never inquired as to whether or not the notes were on the books or whether or not there was a book entry. I had assumed that what Mr. Fairchild did was put an entry in his books of that transaction and that debt back when it occurred, in probably 1980, but now I didn't ask if that had happened. That just wasn't my responsibility or my duty or——

Ms. Naughton. I understand.

Mr. Ingram. That just didn't occur to me to go ask that.

Ms. Naughton. In order for the bookkeeper to post it on the books, the debt, they would have to know who the debtor is.

Mr. Ingram. They knew—Mr. Wiley Fairchild knew that Judge Nixon was the debtor for a long period of time, from basically when this transaction took place.

Ms. Naughton. But if Mr. Fairchild did not convey that to the bookkeeper, there would be no way for the bookkeeper to put that on the books?

Mr. Ingram. And if Mr. Fairchild didn't convey that, that's knowledge totally outside of what I know.

Ms. Naughton. Now, the notes do not say what they are for. In other words, it is not clear from the notes, is it, that this is for any particular piece of property?

Mr. Ingram. That's correct.

Ms. Naughton. Whatever it is that a loan is made, for whatever purpose; is that correct?

Mr. Ingram. Right.

Ms. Naughton. Did you do that for a particular reason?

Mr. Ingram. No, for no particular reason. I probably said to a staff person in my office I need notes prepared in these amounts, these terms, and I suspect they prepared them and brought them to my office. I don't—I would not—that's probably a form note. I haven't really looked at it that closely, but it is probably a form note. And so I wouldn't—I didn't sit down and dictate that note.

Ms. Naughton. Since the notes are not specific as to the property, why didn't you have one note for $9,500?

Mr. Ingram. You very well could have one note.

Ms. Naughton. Why didn't you?

Mr. Ingram. I don't know. For no particular reason, except I had in mind there were three transactions, three different pieces of property, and I probably gave instructions to separate the notes in three different notes.

I could have put, I could have done that note any number of ways. I wish now I had. But I didn't feel the responsibility to do that. I didn't feel the necessity to do that. It wasn't incumbent on that.

If I had known you would have been looking at that note at this committee, then you bet; I probably would have turned it over to a commercial lawyer in my office and had him prepare it.

Ms. NAUGHTON. Other than giving it to somebody else to do, you said you would do it differently now. How would you do it?

Mr. INGRAM. You could prepare the $9,500 notes, put the descriptions of the properties in there. You could have secured it to the properties. You could have, you could have made it a very sophisticated instrument.

All I was simply doing—Mr. Fairchild had confidence in what he was doing, had no question in what he was doing, probably would not even have requested a note if there had not been a note. To him, the debt was there and the notes were prepared as evidence of that debt. And they are very simple notes.

Ms. NAUGHTON. As Judge Nixon was concerned, you say he did not request written notes, correct?

Mr. INGRAM. No, he did not request written notes.

Ms. NAUGHTON. And since they aren't specific in the property that is assigned to them, he could use any of these figures as a basis for any of the three wells?

Mr. INGRAM. I assume he could do that. I don't know what he did.

Ms. NAUGHTON. Sure. Was there any provision, Mr. Ingram, either communicated verbally in this agreement, or was it your understanding that Judge Nixon did not have to pay on the notes unless the wells produced?

Mr. INGRAM. That was never a part of this agreement that I am aware of.

Ms. NAUGHTON. Do you know, sir, judging from your dealings with Mr. Fairchild, do you have an opinion on whether or not Mr. Fairchild would have collected on the notes that had the wells not produced?

Mr. INGRAM. I will assure you, having known Mr. Fairchild for the number of years I have known him, having done business with him, as his lawyer, and as I have seen him perform his business in relationship to other people, if those properties had turned out to be worthless, Mr. Fairchild would have collected every penny under the notes, including the principal, interest and attorney fees, no question about it.

Mr. Fairchild is a complex person. He can be very generous to charitable entities, the university or some charity, the Boy Scouts or something of that nature, may well on that day give $100,000 to the university. But if you owe him $1,000, you are going to pay Mr. Fairchild $1,000. I assure you of that.

Ms. NAUGHTON. Are you aware Judge Nixon didn't pay the interest on the notes from 1980 to 1981 until after the investigation began?

Mr. INGRAM. I am not aware of that. But I'm aware of what Mr. Fairchild's method of operation of business was.

Ms. NAUGHTON. Well, you say that Mr. Fairchild would have collected on the notes. Do you think he would have sued to collect?

Mr. INGRAM. If it were necessary, he would have.

Ms. NAUGHTON. A Federal judge?

Mr. INGRAM. Yes, and I think that goes to the principle that Mr. Fairchild has in, built within him. As I said, he can be generous on the one hand to a charity, but if a debt is owed to him, that is very important to him as a person. That debt must be paid, and he will take the action to collect it.

Ms. NAUGHTON. Do you know specifically why it took so long from the date that Mr. Fairchild picked out the properties until the date that the documents were actually executed? Do you know why that period of months elapsed?

Mr. INGRAM. I do not.

Ms. NAUGHTON. Were you ever given a reason for it?

Mr. INGRAM. Never was.

Ms. NAUGHTON. Were you present when Mr. Fairchild instructed Skip Jarvis or other members of his office on how to prepare the leases?

Mr. INGRAM. I was not.

Ms. NAUGHTON. When you received the leases—and if you want, they are at tab 4 if you want to look at them—did you notice that the grantee's name was left blank?

Mr. INGRAM. I think I did, yes.

Ms. NAUGHTON. Before you recorded them, did you see to it that the name was filled in?

Mr. INGRAM. I really don't think so. I think what happened is the instruments came to my office with incorrect acreage. I called Mr. Fairchild and told him that the acreage was incorrect as to what my memory of the transaction was. He agreed with that, asked that they be sent back.

I think at that time I expressed to him that, that the grantee was left blank and probably suggested to him the name to put in the deed. I don't know that to be a fact. I'm making a judgment after the fact of having reconstructed the matter.

It very well could have been that I said to my office, eve after talking to Judge Nixon as to how he wanted the grantee to read, it is not unusual that the grantee could come blank from the Fairchild office because Mr. Fairchild probably would not know whether or not Mr.—whether or not Judge Nixon wanted the properties to be in his individual name, to be in his and his wife's name, or to be in some partnership or some company, or whether or not he wanted them tenancy by the entirety, tenancy of joint tenant or tenancy in common. So it would be not unusual for the instruments to come to my office blank if Mr. Fairchild didn't know specifically how Judge Nixon wanted to take title to them.

So now I don't know whether or not I called Judge Nixon and asked him how he wanted to take title to them or whether I asked Mr. Fairchild, I said, "Look if the grantee is not in there, put them in the name of Judge Walter Nixon," and the Fairchild office prepared them that way and sent them back to my office and it was fine. I really don't know. I don't know to this day.

Ms. NAUGHTON. Do you recall discussing with Judge Nixon?

Mr. INGRAM. I really do not. I don't recall that. And I could have, you know, or either I could have just made the judgment to put them in his individual name, or Mr. Fairchild could have made the judgment to put them in his individual name. It was not an issue that was significant at the time.

Ms. NAUGHTON. When you say you got the first, shall we call it the first draft of the leases that had the wrong acreage.

Mr. INGRAM. The royalty deeds.

Ms. NAUGHTON. Yes, excuse me. How did you know that the acreage was wrong?

Mr. INGRAM. Because I looked at the description and looked at the face of the instrument, and it had, I think, one acre in each plot, in each of the three it had the figure 1. I knew that was wrong.

Ms. NAUGHTON. Did you know that from looking at the paper you kept in your drawer?

Mr. INGRAM. I knew that from my mind and memory. And I'm quite sure that probably what I did was pull the paper out and look at it.

I don't recall pulling it out and looking at it, but it was obvious when I got the deeds that there was an error in the acreage. And I called Mr. Fairchild, and he readily agreed there was an error and said, "Send them back and I'll have them redone." And I did that. I sent them back by his employee.

Ms. NAUGHTON. Did you also tell him there was an error in how the deeds had been dated? That is February, 1981, when the documents were executed?

Mr. INGRAM. No, I don't recall having done that at all. I don't recall saying that there was an error.

You can well imagine that I have been asked that question many, many times during the course of this investigation. And I tell you truthfully today I don't know whether or not I discussed the date with Mr. Fairchild or not.

I had said in my testimony I very well could have said, as a reminder to him, that this transaction took place sometime prior to this and that he needs to be aware of that. I could have very well said that. I don't recall having said that. But——

Ms. NAUGHTON. First of all, let me ask you this: Did you discuss the dating of the documents with anybody in Mr. Fairchild's office other than perhaps Mr. Fairchild himself?

Mr. INGRAM. I did not.

Ms. NAUGHTON. So not with Skip Jarvis, not with Billy Riley, or anyone else?

Mr. INGRAM. I did not discuss the dating of those instruments with anybody other than possibly Mr. Fairchild. And I don't really know whether or not I discussed them with Mr. Fairchild.

As I've gone back to try to reconstruct what happened, it is entirely possible, it is entirely reasonable that I did. It is entirely reasonable that when I looked at the instruments and saw the incorrect acreage that I also saw the date on them, that I discussed that with Mr. Fairchild. There would be nothing out of the ordinary, nothing unusual about that if I had.

Ms. NAUGHTON. Let me ask you this: Did you tell Mr. Fairchild or anyone working in his office that it would look better if the deeds were dated 1980 in relation to when the drug bust involving Drew Fairchild occurred?

Mr. **Ingram**. No. That absolutely did not occur.

Ms. **Naughton**. Do you know how Mr.——

Mr. **Ingram**. There has never been a discussion about the dating or the signing or the conveyance of these instruments, never in any relationship to the Drew Fairchild matter. That was not present.

Ms. **Naughton**. Do you know how Mr. Fairchild might have gotten that impression that this was your instruction for that reason?

Mr. **Ingram**. No, I do not. All I know is that there is, there has been considerable conflict in Mr. Fairchild's office between him and some of his employees, some rather heated, difficult conflicts between he and Mr. Jarvis.

Now, how he got that idea, whether he got that idea or not, that has never been expressed until way down into this investigation, long after I testified before the grand jury the first time. It is the first time I ever heard that expression.

And so I think that that idea came about long into this investigation and certainly not at the time these instruments were conveyed.

Ms. **Naughton**. When you got the first batch of deeds, the ones with incorrect acreage, did you inform Judge Nixon that you had received the deeds but they were the wrong acreage?

Mr. **Ingram**. I did not, didn't see any need to inform him. I informed him when I got the correct ones.

Ms. **Naughton**. OK.

Mr. **Ingram**. By the way, with respect to the instruments, I didn't know there were two sets of instruments until I got in the grand jury room the first time. I thought that, when the instruments were sent down to my office and I called back to, and was requested to send the instruments back, I thought the instruments were taken back and corrected and that there was one set of instruments. I never knew there was two sets of instruments, did not know it until I was confronted in the grand jury with the two sets.

Ms. **Naughton**. In asking Mr. Fairchild to correct the acreage from 1–1–1 to 3–3–5, would you say you were acting on behalf of Judge Nixon at that time to make sure he got the right acreage?

Mr. **Ingram**. No. I wasn't acting on behalf of Judge Nixon, wasn't acting on behalf of Wiley Fairchild. I had just been told what the acreage was, and I thought it was an error, and I thought I ought to call it to Mr. Fairchild's attention and I did. He thought I should have.

He was, not only was there not an objection about it, I had the sense, a feeling that he appreciated my having called it to his attention.

Ms. **Naughton**. Mr. Ingram, from the years 1979, when this transaction first began, through, let's say, 1983, up until when the investigation started, did you ever discuss or even mention the oil transaction between Mr. Fairchild and Judge Nixon to anyone other than those two men?

Mr. **Ingram**. I very well could have. I don't know that I have ever been asked that question before. I very well could have. I suspect I mentioned it or discussed it in my office, in my law office.

I don't have a recollection of talking to a particular person about it or a particular person talking to me about it, but it is entirely possible that a lot of people knew about it.

Ms. NAUGHTON. You don't recall specifically with whom you might have discussed this?

Mr. INGRAM. No, I do not. Did you discuss it with Bud Holmes?

Mr. INGRAM. I don't think so. But if Bud Holmes knew about the transaction, if Judge Nixon had told him about it or Mr. Fairchild had told him about it, I very well could have said, sure, that, yes, the transaction was there and told him about the transaction. I very well could have.

I did not see a need to go discuss the matter with Mr. Holmes or anybody else. But it is not something that I would have been ashamed to discuss or that I would have felt the need not to discuss. I usually am a fairly discrete person.

I do not really go around discussing other people's business just off the cuff. I really do not. I usually have to be questioned about it before I would, before I would do that. I would not just volunteer to do that.

Ms. NAUGHTON. By the way, along those lines, the deeds themselves, of course, say that the consideration for the interest is $10, and then other considerations. Is that fairly——

Mr. INGRAM. There are——

Ms. NAUGHTON. If I could finish my question. Is that fairly standard and common practice not to list the actual price on the deed itself?

Mr. INGRAM. That is correct. In fact, if you were to convey $100 million hotel property in Mississippi, the record title would show for $10 and other good and valuable considerations.

In fact, I don't think in the 20 years that I have been practicing law, the 21 years that I have ever put in a deed what the consideration was. It is a standard practice that you put $10 and other good and valuable consideration.

I imagine you would create a scene at the courthouse when you put the consideration in a deed. The lawyers would gather around to see it.

Ms. NAUGHTON. Now, was it your understanding, Mr. Ingram, that the deeds would not be effective until the first day the well produced?

Mr. INGRAM. No. My understanding, the deeds were effective on the day of the transfer.

It was my understanding that at the time that Mr. Fairchild and Judge Nixon agreed upon this particular purchase, that even though it might not have been legally sufficient, that that was their transaction.

Ms. NAUGHTON. What do you mean, "legally sufficient"?

Mr. INGRAM. Well, it wasn't reduced to writing at that time.

Ms. NAUGHTON. But was it an enforcible deal, let's say, in 1980?

Mr. INGRAM. Well, I doubt very seriously that either party could have enforced it in the courts because it was not in writing in 1980. But as far as I'm concerned, the parties had made an agreement to convey the properties, and I expected that to be lived up to.

Ms. NAUGHTON. OK. So in your opinion, Mr. Fairchild couldn't have collected on the interest on the notes in 1980 to 1981?

Mr. Ingram. After those notes were signed he could.

Ms. Naughton. Now, I would like to call your attention again to the deeds, if I could. That is tab 4. If we could look at the Marion County, just as an example. You have stated that it was your understanding that the conveyances were to be effective from the date, I guess, of the agreement.

Mr. Ingram. The date of execution, yes.

Ms. Naughton. Which would be February of 1981, right?

Mr. Ingram. Well, the facts are that the deeds show on their face that they were executed on the 25th day of February, 1980. So as far as I'm concerned, that is the effective date of the deed.

If I'm looking at that deed, that royalty deed, then that is the effective date of that deed. That represents to me when that transaction took place. And that deed is effective from that point on out.

Ms. Naughton. Then the language which is typed into the lease, the last——

Mr. Ingram. To the royalty deed, not the lease.

Ms. Naughton. Excuse me, the royalty deed. Is this conveyance, this conveyance is to be effective from the first day of production.

Mr. Ingram. This language is typed in there by someone. The facts are that I did not know that the language was in there until I looked at it in the grand jury room. That did not occur to me. And I think somebody erroneously put that in there. I think it is a mistake to be in there.

Ms. Naughton. Why?

Mr. Ingram. I think that it is not necessary to be in there. It is a term royalty deed, and you have the effective date as to when it is signed. But somebody else prepared the deed, and I'm not, I wasn't called on to make a judgment as to whether or not the deed was correct or not or that that was sufficient legal terminology or what effect it had on the deed.

Ms. Naughton. This term, does it not, gives—for instance, we have heard evidence that L. D. Roswell was actually in production in September of 1980, first day of production. This term, of course, would give Judge Nixon that conveyance as of the first day of production, correct?

Mr. Ingram. The date February 20, 1980, gave him that production. If you had not had this language in the deed, if you had not had this language in the deed and the February 20, 1980, was on the deed and that deed is recorded, then he is entitled to the production runs from the time of February 20, 1980.

Ms. Naughton. That's great. But I'm asking you the effectiveness of that clause.

Mr. Ingram. I think the effectiveness of that clause is, I don't know why someone put it in there.

Ms. Naughton. To your understanding, was this a typical or standard clause for Mr. Fairchild to put in a royalty deed?

Mr. Ingram. Very well could have been.

Ms. Naughton. Well, in the ones you prepared for him, did you ever put that clause?

Mr. Ingram. We may have put that clause in there. One of the things that, one of the things that you do by putting a clause similar to that in there, let's assume for a moment that you bought royalty on July 1, 1988, and you signed the deed on July 1, 1988.

That well was in production, and you were actually buying production. And that well had been in production, say, for six months.

It may well be that in your deal you had bought the production. And you would put a clause in there that says, irrespective of when this deed is dated, the royalty provisions of this deed are effective from the first date of runs, first date of production. And that would have meant that you would have gone back beyond the date of the deed.

So I failed to understand, and maybe I'm not an expert in this field, but I failed to understand the necessity of this clause being in this deed.

Ms. NAUGHTON. For a—assuming that none of the wells were in production?

Mr. INGRAM. Even if they are in production, what difference does it make? It makes no difference.

Ms. NAUGHTON. The difference is, for instance, in the case of the Roswell, Judge Nixon would then be entitled to the income since September when the date it first came into production.

Mr. INGRAM. That's right. If the deed is dated the 25th day of February, 1980—now, follow me. The deed is dated February 20, 1980, and production then starts in September of 1980, nine months later, then I tell you, Judge Nixon is entitled to the production when it starts because he already has the conveyance.

Ms. NAUGHTON. If the well is dry, there is still a conveyance?

Mr. INGRAM. You bet, and Judge Nixon owes the money for a dry hole or for worthless royalty. That is the risk that is involved in a transaction like this.

Ms. NAUGHTON. If the well does not produce until after the execution of the document, then is it your testimony that that clause is irrelevant?

Mr. INGRAM. I fail to see the necessity to put that, put that in this deed, put that clause in this deed.

Now, I don't say to you that I'm an expert in oil and gas. I have prepared royalty deeds and other kinds of deeds. But now, as far as this deed is concerned, Judge Nixon owned the royalty on that property from February 25, 1980, and it doesn't matter when the deed was signed. And there is valid case law in Mississippi that says that.

In fact, I have got the case in my office. It is a Mississippi court case. It says it doesn't matter when you actually date the deed, that the date on the deed controls the effective date of the instrument.

Ms. NAUGHTON. Now, did you send—strike that.

When you brought the deeds over to Judge Nixon for signing, can you recall what your conversation was with him?

Mr. INGRAM. I delivered the deeds to Judge Nixon in his office in Biloxi. I carried the notes with me at the same time. It was not necessary for him to sign the deeds, but it was necessary for him to sign the notes. He signed the notes.

I pointed out to him that I had conformed the notes to the deeds, and he signed them. He gave me the original note back to take back to Mr. Fairchild. I took the original deeds back to be recorded. Whether or not I took them back at his request or at my suggestion, knowing the agreeable fellow that I am, I probably said to him, "I'll record the deeds for you." I probably said that. That would be, that would be consistent with basically what I would do.

In our office now we have practice that we try to always record the deed for people because we, because sometimes they can take them home and not record them. And we have a practice now in our office of more or less insisting that our office record the deeds.

Ms. NAUGHTON. And I take it because the notes were unsecured, you didn't need to record them in any form?

Mr. INGRAM. There was no need to record them.

Ms. NAUGHTON. And they weren't recorded any place, right?

Mr. INGRAM. No, they weren't.

Ms. NAUGHTON. For that period of time you had the originals in your office until you sent them to Mr. Fairchild, isn't that correct?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. The Mobile County well, the Wilkie well, was not the deed to that—if you want to look, it is the first deed on tab 4—was not filed until October 19, 1982?

Mr. INGRAM. Correct.

Ms. NAUGHTON. Can you tell us why that was?

Mr. INGRAM. There was some problem in the filing. I think it was first sent down, it was sent back. They had some requirements that were peculiar to filing for record such as you had to give the address and maybe a tax number. There were two or three requirements that were, that I was not familiar with, or that my office was not familiar with for recording instruments in Mobile County. And so those instruments were sent down there a couple of times until that information was provided. Then when that was complete, then it was done. Then it was recorded.

Ms. NAUGHTON. Is it your testimony that that was done by your office and not by the Fairchild office?

Mr. INGRAM. I think it was done by my office, but I could be wrong about that. I really think, I think we were doing that recording.

Ms. NAUGHTON. OK. I would like to switch gears a little bit.

Mr. INGRAM. Is that inconsistent with something I said earlier about the recording of the Mobile thing?

Ms. NAUGHTON. Not that I'm aware of in your testimony, no.

Mr. INGRAM. I really think I took the deeds back from Judge Nixon to be recorded. As I recall, our office had difficulty in meeting the requirements, and they were clerical requirements.

There was information about the grantee and the grantor and things you have to provide that clerk before they will accept the instrument for recording. And I think that two or three times we sent it down there, and maybe it was ineptness on my part, but we didn't get the information straight for a while.

Ms. NAUGHTON. If we could switch gears for a minute to Drew Fairchild's case, did you know Drew?

Mr. INGRAM. Yes.

Ms. NAUGHTON. I assume you knew him to be Wiley's son?

Mr. INGRAM. Yes.

Ms. NAUGHTON. How long had you known Drew?

Mr. INGRAM. Fifteen years, 10 years, you know, just a long time, after I started practicing law. I did not know him before that. I really didn't think he lived in this area.

Ms. Naughton. Did you ever do any legal work for Drew?

Mr. Ingram. We could have. I really think that I represented his wife in a divorce, is what I really think. So I don't think I represented him.

I think I represented his wife, and this is going back to my very earliest days of law practice. I really think I represented his wife at the request of Mr. Fairchild, Mr. Wiley Fairchild.

Ms. Naughton. He asked you to represent the wife in the divorce proceedings?

Mr. Ingram. I think that is correct, and he may well have paid the bill for it.

Ms. Naughton. Did you find that unusual?

Mr. Ingram. Yes, you would find that unusual.

Ms. Naughton. Did he have a reason?

Mr. Ingram. Yes, he had a reason.

Ms. Naughton. What was that?

Mr. Ingram. Well, family reasons, you know. I mean, it was—you got to understand that Mr. Wiley Fairchild and Drew Fairchild had a very explosive relationship through the years. Now there was any, there wasn't, there wasn't any peaceful situation there between those two people. I don't want to testify to anything I don't know.

I might, could go back and find a records somewhere of that divorce. But as I sit here right now, that's basically what I remember about it, that Mr. Wiley Fairchild asked me to represent his son's wife in a divorce action.

Ms. Naughton. Did Drew at some point consult you about his case, that is, his involvement with the plane load of marijuana that was seized at the Hattiesburg airport in August of 1980?

Mr. Ingram. He did.

Ms. Naughton. At that time was he represented by Bill Porter?

Mr. Ingram. He was.

Ms. Naughton. Why did he come to you?

Mr. Ingram. Because I had represented his father's interest down through the years. I think he thought I was a fine lawyer at that particular moment. I think that he probably thought that I could probably do about as fine a job representing his interest as anybody could, and he wanted me to do that. I didn't accept employment in the case.

Ms. Naughton. Why not?

Mr. Ingram. I did talk to his lawyer Bill Porter and had approval to talk to Drew about the matter, and there were two reasons that I didn't accept employment. Number one, I reviewed his deal that he had made with the Federal prosecutors or narcotics agents, whoever made the deal with him. I thought it was a good deal, thought he ought to take it.

And number two, I didn't want to represent Drew Fairchild because I knew you wouldn't get paid. And if you did get paid, it would be a hassle, and that he wasn't reliable, that there was not a way you could depend on what he told you. I wasn't interested in representing him.

Ms. Naughton. Did he indicate to you whether he truly intended on cooperating with the Federal Government in doing what they wanted him to do?

Mr. INGRAM. No, he didn't. But I told him in no uncertain terms, because I knew his propensity for being unreliable, and I told him in no uncertain terms that if he agreed to that plea bargain agreement, that he better deliver for the Government, he better comply with the terms of that agreement, that it was too risky for him not to do it. And if he wasn't going to do that, then he needed to tell his lawyer to enter him a defense.

Ms. NAUGHTON. When you say his "propensity for being reliable," did you mean "reliable" or "unreliable"?

Mr. INGRAM. Well, either way you want to say it, he was unreliable.

Ms. NAUGHTON. Did Drew indicate to you any hesitancy in cooperating with the Federal Government?

Mr. INGRAM. Sure he did.

Ms. NAUGHTON. What as that based on?

Mr. INGRAM. When you start talking about being cooperative with the Federal narcotics agents, that means delivering to them evidence on violations of the law, and that is dangerous business.

Ms. NAUGHTON. Do you know whether or not he had spoken to Wiley about his cooperation in the deal?

Mr. INGRAM. I do not.

Ms. NAUGHTON. Did Wiley ask you to speak to Drew?

Mr. INGRAM. I think he did. I'm not absolutely positive about that. I think if Wiley had not, I probably would not have talked to him. I'm not sure about that.

Ms. NAUGHTON. Did Drew trust Bill Porter as his attorney?

Mr. INGRAM. I don't think Drew trusted Bill Porter. He didn't trust me. He didn't trust anybody that I know of that's a lawyer.

Ms. NAUGHTON. Did he feel that Bill Porter was doing a good job for him?

Mr. INGRAM. I don't know. I don't have a judgment about that. I told him I thought Bill Porter had done a fine job for him. I thought that he had negotiated a fine deal for him to take in that drug plea.

Ms. NAUGHTON. After Drew was indicted by the State authorities in the summer of 1981, did the subject of your representing Drew ever come up with either Wiley or Drew at that point?

Mr. INGRAM. It came up with Drew. He came back to my office after Bill Porter had died and to talk to me about the possibility of representing him.

Ms. NAUGHTON. Before we get to that, I want to stick for a minute in the summer of 1981, after he was indicted by the State authorities.

Did Wiley ever indicate to you that he, that Drew retained Bill Porter as an attorney because Bud Holmes had recommended that he retain Bill Porter?

Mr. INGRAM. No.

Ms. NAUGHTON. That was never discussed at that time?

Mr. INGRAM. No.

Ms. NAUGHTON. Were you asked to represent Drew at that time right after his indictment?

Mr. INGRAM. No.

Ms. NAUGHTON. Did you ever discuss Drew's case with Bud Holmes after Drew was indicted by the State authorities?

Mr. INGRAM. Well, I think that you have to define the term "discuss." I didn't have any lengthy discussions or I wasn't representing Drew.

I didn't have a responsibility to discuss anything with Bud Holmes. But Bud Holmes, as I told you this morning, his office was near mine. I think for a while we parked in the same parking lot.

But Holmes is an outgoing person, and I will tell you, if you meet him out in the hallway out here, he will tell you what's on his mind, and it doesn't matter what it is. If it is on his mind, he will tell you.

So there were occasions when Drew Fairchild's case was in the media, when it was in the press, when there was some talk between Bud and I about Drew Fairchild's case. And that comes about by virtue of the fact that Mr. Holmes knew that I had been long time representing Mr. Fairchild and his interests.

That just came about as a matter of information, not as a matter of my trying to attempt to get Mr. Holmes to do something about Drew's case or not do something about it. I didn't ask Mr. Holmes to do anything about Drew's case, because that wasn't my responsibility. I wasn't employed to do that. I didn't represent Drew.

Ms. NAUGHTON. Do you know during this period of time, I'm talking about the summer of 1981, maybe early 1982, do you know if Mr. Fairchild was in touch with Judge Nixon after the deeds had been signed?

Mr. INGRAM. I don't know whether they were or whether they weren't. I think they were, but for me to know that, I don't know that. I believe they were.

Ms. NAUGHTON. Did there come a time at which you brought Judge Nixon to visit with Wiley Fairchild in Wiley's office?

Mr. INGRAM. I did. Sometime after Mr. Fairchild had agreed to make an investment with Judge Nixon, or vice versa, Mr. Fairchild said to me, "Sometime when Judge Nixon is in Hattiesburg, I would like for you to bring him by for a cup of coffee and visit a while." I did that at his request.

For some reason, I knew Judge Nixon would be in town for a particular day. It might have been a court setting or a motion setting or something like that.

As I recall, I met Judge Nixon out at the Fairchild office one morning at about 11 o'clock. We visited for a few minutes, 15, 20 minutes, something like that. They had a very nice visit. Both of them were pleased about the transactions that they had made together. And the conversation while I was in the room was that of a very friendly natured, social visit.

Ms. NAUGHTON. At that time, had the royalties from the wells that were drilled started coming, did they start coming in?

Mr. INGRAM. I don't think so. I think the deeds had been delivered. And the reason I think that the deeds had been delivered, I just, I believe that there was some concern during that significant period of time when the deeds were delivered.

I believe at that time there had been some discussions of when are we going to execute the deeds. I have a sense that the deeds had already been executed and delivered at that time.

Ms. NAUGHTON. Did Judge Nixon thank Mr. Fairchild for putting him in for the deal?

Mr. **Ingram**. Yes. Said, "I appreciate the opportunity of our doing this together," something to that extent. Yes.

Ms. **Naughton**. Were you present for this whole conversation?

Mr. **Ingram**. I was not present for the whole conversation.

As I got back to thinking more deeply about that conversation then, I think I did step out of the room for a while and get a cup of coffee with some of the other employees out there around the coffee table. I am not sure whether or not I did that out of a sense of letting Mr. Fairchild and Judge Nixon have a visit privately. That could have motivated that, even though I had no knowledge of there being a need for private conversation, but probably I excused myself for that reason, five minutes, ten minutes, some short period of time; or I could very well have stepped outside the room to get a cup of coffee and the employees at the construction company are sitting around the table having a cup of coffee and I stood there and visited with them for a while and then returned to the meeting. But there was a time, as best I can recall after the fact now, that I was out of the room for a few minutes.

But there wasn't—I don't want to convey to you that there was something unusual about that or that there is something wrong about that. I could have just as easily stayed there for the whole conversation or the whole visit as I could have.

Ms. **Naughton**. Let me ask you this one specific question. Were you present when Judge Nixon said something to the effect to Mr. Fairchild, if ever there is something I can do to help you, I will, and if I can't, I will tell you?

Mr. **Ingram**. No, I wasn't there. If that statement were made, I was not present.

Ms. **Naughton**. Now, did you come to learn from Mr. Fairchild, Wiley Fairchild, that he had had a—had contact with Judge Nixon and Bud Holmes concerning the status of Drew Fairchild's case?

Mr. **Ingram**. I did sometime later, yes.

Ms. **Naughton**. Can you tell me what you were told by Mr. Fairchild?

Mr. **Ingram**. Well, I was told initially just very little. In some of my contact with Mr. Fairchild—and I want to believe it was on the telephone—it was not uncommon to have a lot of telephone contact with Mr. Fairchild; he was a person who talked on the telephone a lot. He had private numbers. I think he kind of enjoyed that. So I think it was on the telephone that I learned from Mr. Fairchild, during the time when the discussions were ongoing and the press was ongoing about Drew Fairchild's case on the State docket, that he had asked Judge Nixon to speak to Bud Holmes about the case. That was just information that was passed to me.

Mr. **Edwards**. We will take a ten-minute break now, and we will start with that subject.

Mr. **Ingram**. OK, sir.

[Recess.]

Mr. **Edwards**. The subcommittee will come to order.

Ms. Naughton, you may proceed.

Ms. **Naughton**. Thank you, Mr. Chairman.

Mr. Ingram, I believe when we broke, you were telling us that you had learned from Wiley Fairchild that he had some sort of conversation with Judge Nixon and/or Bud Holmes regarding Drew's case. You were telling us what he told you.

Mr. INGRAM. I finished telling you what he told me. He just simply passed that as information. I didn't attach any significance to that. I didn't inquire about it. It wasn't something that I was involved in or that I needed to explore. I really didn't know the circumstances around what they were talking about.

Ms. NAUGHTON. Did Mr. Fairchild say he had gotten the word that Drew's case would be OK?

Mr. INGRAM. Yes, I think. And what I mean by that, "OK," some way I had—I knew about the plea bargain agreement that Drew Fairchild had originally entered into with the Federal Government. I got the sense that that agreement which he had been—which he had entered into was going to be honored.

Ms. NAUGHTON. OK.

Mr. INGRAM. OK. When I say his case was going to be OK, that that agreement was going to be honored, that there was not going to be something imposed upon him greater than that agreement.

Ms. NAUGHTON. When you say "honored," do you mean by the State authorities or by the Federal authorities?

Mr. INGRAM. By anybody, by the State or the Federal, that that was the deal he cut with the Federal Government. It is a common practice in our area that if you have one—if you have a criminal circumstance where the State and the Federal Government both have jurisdiction over it, then whoever makes the plea bargain arrangement, it is generally honored by both.

Ms. NAUGHTON. OK. But did Mr. Fairchild say he had spoken to Bud Holmes?

Mr. INGRAM. I don't know that he said he had spoken to Bud Holmes.

Ms. NAUGHTON. Did this conversation with Mr. Fairchild take place after Drew was indicted by the state?

Mr. INGRAM. I am sure it did, yes.

Ms. NAUGHTON. And did Wiley say he had spoken to Judge Nixon about the matter?

Mr. INGRAM. Yes. I believe that what happened was that Wiley just informed me that he had asked Judge Nixon to speak to Bud Holmes about Drew's case and to do that out of account of friendship.

Ms. NAUGHTON. Was Wiley—did he appear to be pleased about the news he had gotten on Drew's case?

Mr. INGRAM. Well, not at that particular time, because I don't think—I just don't recall whether or not in the context of that conversation I got the idea he was pleased or not pleased about it.

I think I got information that he had—that he had, in a conversation with Judge Nixon, had requested Judge Nixon to speak to Mr. Holmes about that case.

Ms. NAUGHTON. But he didn't tell you what the outcome of that was at that time?

Mr. INGRAM. He may have. I may need to go back to my trial testimony and look at that, because——

Ms. NAUGHTON. OK. I could read you parts or you could look at around 1066.

Mr. **Ingram**. Why don't you just look at it and that will save us some time.

He may well have expressed a thought about being pleased about it or something of that nature. But my trial testimony would probably be more accurate about that, because I would have thought more about my testimony and probably gone through the details a little more.

Ms. **Naughton**. At—I believe it starts at 1066, but I am looking at 1068 right now—did it come to your attention, "Question: Did it come to your attention that Wiley Fairchild and Judge Nixon had contacts about Drew Fairchild's case?

"Answer: Yes, it did sometime in the late fall of 1982."

Mr. **Ingram**. OK.

Ms. **Naughton**. "Mr. Fairchild told me he asked Judge Nixon to talk to Mr. Holmes about Drew Fairchild's case.

"Question: What else did he say to you?

"Answer: He said Judge Nixon had talked to him and Judge Nixon had confirmed that he had talked to him.

"Question: And did he get any result from Judge Nixon?

"Answer: Well, the results that he indicated to me were that the results were positive, that he had in fact talked to him and that those results were positive.

"Question: In what sense positive?

"Answer: In a sense of wellbeing that Drew Fairchild's case was going to be OK.

"Question: Where did Wiley Fairchild say he got that answer?

"Answer: I got it from Judge Nixon."

Mr. **Ingram**. That would be a more accurate record of what my memory was, because in the trial transcript—I mean in the trial of the case I gave a lot of thought to that; and I wasn't absolutely sure, as I sit here now, that all that took place in one conversation, but it must have.

Ms. **Naughton**. And given what you testified to then I take it that this conversation with Wiley came before the case was passed to the files in December of 1982?

Mr. **Ingram**. I believed that it did at that time, and I want to say—and I think my testimony at trial bears that out—I couldn't say that for sure. I could not absolutely say that that conversation took place before the case was passed to the file.

I think I attached significance to the fact that it was passed to the files and that I made a judgment that it did take place and I think on it—in my trial testimony I said that and stated that.

Ms. **Naughton**. Did you also have a conversation with Judge Nixon in which he indicated to you that he had spoken to Bud Holmes about Drew Fairchild's case?

Mr. **Ingram**. I did. Sometime—and I don't know when that was, but sometime after the first Fairchild conversation, in a conversation I had with Judge Nixon, almost in an implied way Judge Nixon conveyed to me the information that he had spoken to Bud about Drew's case. I did not ask him any questions about it, I didn't go into the detail about it.

In fact, during the phone conversation and after, I was not really sure what the message was. I wasn't really sure what it was, and it was only in the context of after this investigation got started, after the grand jury appearance, that I then could really relate that that in fact had occurred.

Do you follow me?

Ms. NAUGHTON. Yes.

Mr. INGRAM. In other words, confirm in my mind that that had occurred.

Ms. NAUGHTON. Now, did this conversation with Judge Nixon take place prior to the passing of the files?

Mr. INGRAM. I don't know that. I really do not know that. It very well could have. It could have taken place after that. I can't even remember now what I testified to at my trial. I think in my trial testimony I was not sure when that telephone conversation took place.

Ms. NAUGHTON. Well, you feel it is a little convoluted because we had some objections, and I don't think you were ever asked, I don't think it ever came out clearly.

Mr. INGRAM. Then I don't think I ever put a time or a date that I could be sure about on that conversation. And I can't now.

Ms. NAUGHTON. Let me read you what you did say about the conversation, because that is the critical thing, not the timing.

Mr. INGRAM. All right.

Ms. NAUGHTON. On page 1069 at the bottom of the page, "Question: And did he indicate to you anything that Mr. Holmes may have done or said about Drew Fairchild's case?"—indicating Judge Nixon.

"Answer: The indication was that he talked to Mr. Holmes about it and Mr. Holmes was—I would say that Mr. Holmes would give consideration to his request. It was a good feeling or a good positive reaction to that."

Further on, "Question: Did Judge Nixon indicate to you why he had gone to Bud Holmes?

"Answer: Well, no, he didn't indicate why he did. He just told me that Mr. Fairchild asked him to."

Mr. INGRAM. OK, and that is accurate.

Ms. NAUGHTON. OK.

Did you actually see the order passing the case to file in Drew's case?

Mr. INGRAM. Did I?

Ms. NAUGHTON. Yes.

Mr. INGRAM. Yes—no, I didn't see the order. I saw a copy of the order.

Ms. NAUGHTON. How did that come about?

Mr. INGRAM. After it was passed to the file?

Ms. NAUGHTON. Yes.

Mr. INGRAM. Mr. Holmes gave me a copy of the order and said that I may want to deliver that to Mr. Fairchild and that he had passed the case to the files.

Ms. NAUGHTON. Excuse me. Were you expecting that? Did you know that that was going to happen?

Mr. INGRAM. I had no earthly idea that that was going to happen. I did not know it was coming.

Mr. Holmes simply, as a courtesy to Mr. Fairchild, gave me a copy of it and said would you give him the copy, and I did that.

Ms. NAUGHTON. Do you know if he gave a copy to Bill Porter, Drew's attorney?

Mr. INGRAM. I had no idea whether he did or whether he didn't.

Ms. NAUGHTON. Did he explain to you why he was giving you a copy, since you did not represent Drew?

Mr. INGRAM. No, there was no need for an explanation. I mean, Mr. Holmes knew that, down through the years, that I had represented Mr. Fairchild and that—I think that Mr. Holmes was at that time an elected D.A. I think that is a courtesy that he would extend to a member of the family, and he happened to do it through me.

I wish he hadn't, but he did.

Ms. NAUGHTON. Did you then pass on the order to Mr. Fairchild?

Mr. INGRAM. I delivered a copy of it to him.

Ms. NAUGHTON. What did you say to him when you gave it to him?

Mr. INGRAM. I told him that this is a copy of the order that passes the case to the files, and I think he said—he asked me, "What does that mean?" or what did I think about it or something of that nature. I told him I thought that ended the matter, is what I thought.

Ms. NAUGHTON. Did you make any comments such as, "Here's a Christmas present," or anything of that sort?

Mr. INGRAM. No, I did not. Absolutely did not. That is totally out of character of what I would have done.

Now, I—I do have some professional responsibility and, even though that was an act not as a lawyer but as a—as someone counsel for that family and someone who was actually doing a good deed, a boy scout deed, so to speak—but I don't go around handing people orders and telling them of it being a Christmas present or something of that nature.

I gave Mr. Fairchild a copy of the order, told him what it was.

Ms. NAUGHTON. Now, moving ahead to April 1984 when the investigation took place by the FBI and the Department of Justice, did you receive a telephone call from Judge Nixon after he had been interviewed by the FBI and Department of Justice?

Mr. INGRAM. I did.

Ms. NAUGHTON. What did he say?

Mr. INGRAM. Judge Nixon called me at my home. He had earlier that day attempted to reach me in my office, and I was out of the State or out of town, so I was not there. I learned the next day when I got to my office that there was a message at my office.

So he called me at my home, I think in the early evening, probably around 7:00.

Judge Nixon was very disturbed about having been interviewed. He did not know—he expressed to me he did not know what was going on, he wanted to know what I knew relative to the investigation or relative to that interview. He was giving me news. That is the first time I ever heard of it.

Ms. NAUGHTON. When you say he was disturbed, what precisely was he disturbed about?

Mr. INGRAM. Well, I think that if an investigator walked into my office and said, "I am here to interview you about a matter," I would be disturbed about it.

I think Judge Nixon was disturbed about it.

Ms. NAUGHTON. Was he asking you what the accusations might be against him? Is that the sense you got?

Mr. INGRAM. Yes. I mean, he was saying, what is going on up there—Hattiesburg—up there from the coast. "What's happening? Do you know what's prompting all of this? What's the deal?"

Ms. NAUGHTON. Was there any mention that perhaps Wiley had gone to the authorities and complained?

Mr. INGRAM. No, not at that conversation, I don't believe it was.

Ms. NAUGHTON. Aside from—I suspect from your saying you didn't know what was going on—was there any surmising on the part of yourself or Judge Nixon as to what the investigation was about?

Mr INGRAM. When he told me the context of the interview, in essence the issues that he was questioned about, then I suspect I had all kinds of surmises in my mind about what was going on, none of which had any fact or basis because I didn't know what was going on. That was news to me when I got that telephone call.

Ms. NAUGHTON. Aside from Judge Nixon telling you what he had been asked, did he tell you what he told the FBI and the Department of Justice?

Mr. INGRAM. I think that he told me that he had done nothing wrong, that he had bought the mineral properties, that there wasn't anything improper about what he had done.

You know, I don't remember specifically what he said.

Ms. NAUGHTON. Regarding his conversation with Wiley Fairchild regarding Drew's case, did he mention to you that he told the FBI that he had not spoken to anybody about Drew's case?

Mr. INGRAM. I don't know that. I don't remember that.

Ms. NAUGHTON. Now, did Judge Nixon indicate that he feared that the call to you might be recorded?

Mr. INGRAM. Yes, he did. I think that was—I'll say—I wasn't surprised that he would fear that. He just simply said because he was upset about having been interviewed, he just simply said, "This telephone call, as I speak to you now, may well be recorded. I don't know that. But even if it is, I have a right to talk to you, and I'm not doing anything improper by talking to you. I just want to know what's going on."

Ms. NAUGHTON. Did he ask if you had been interviewed?

Mr. INGRAM. Yes, he did. I told him that he had given me the—that's the first news I had of it.

Ms. NAUGHTON. Did he mention to you speaking to anybody else about his having been interviewed?

Mr. INGRAM. I don't recall his having done that.

Ms. NAUGHTON. Now, sometime after that you testified in the grand jury—was that July 1984?

Mr. INGRAM. Yes.

Ms. NAUGHTON. Is that correct?

Mr. INGRAM. Yes.

Ms. NAUGHTON. Sometime after you testified, did you speak to Bud Holmes and did he tell you about the—about his meeting with Judge Nixon and the phone call to Wiley from Bud Holmes' farm?

Mr. INGRAM. He did.

Ms. NAUGHTON. What did Mr. Holmes tell you about that event?

Mr. INGRAM. He said that he was concerned about the telephone call. He wanted to know whether or not I had been asked in the grand jury about the telephone call that he and Judge Nixon made from his farm to Mr. Fairchild at his home in the evening, at night. And he wanted—he asked me if I thought that Mr. Fairchild had taped the telephone call. I told him I had no way of knowing that but I suspect that he did not.

I mean, I didn't ever know of Mr. Fairchild taping telephone calls. He may have. I don't know that.

And so that was the first time I had heard about the telephone call, the famous telephone call.

Ms. NAUGHTON. Did he ask you if Wiley taped the phone call at the behest of Judge Nixon or someone else, or did you get the impression he was asking on his own behalf?

Mr. INGRAM. I just think he asked me. I don't think he was asking me on behalf of anybody.

Ms. NAUGHTON. He didn't say, "Judge Nixon asked me to find out whether it was taped"?

Mr. INGRAM. No.

Ms. NAUGHTON. Did Mr. Holmes express concern about the phone call in that he had not testified about it or was going to be asked about it, anything to that effect?

Mr. INGRAM. He expressed concern about the telephone call.

Ms. NAUGHTON. Yes?

Mr. INGRAM. Yes, he did. It was an impression of concern about the telephone call as being an element of the investigation.

Ms. NAUGHTON. Can you give us an idea of what he said? I don't mean to quote to compare things.

Mr. INGRAM. He was concerned about whether or not I had been asked in the grand jury about the telephone call. I told him I had not been asked about it, that I didn't know about the telephone call, that that was the first news I had about a telephone call, a specific telephone call.

Ms. NAUGHTON. So your testimony, just so I can get it straight, your testimony and what you told us that occurred when Wiley told you that he had gotten a good or a positive feeling about Drew's case after speaking to Judge Nixon, and then Judge Nixon also telling you or inferring to you that he had put in a good word or had spoken to Bud Holmes about Drew's case—when they told you those things, I gather they did not refer to a telephone call?

Mr. INGRAM. Correct. I had no—and I don't know whether or not, even in hindsight, that the farm telephone call was what Mr. Fairchild was talking about in that conversation with me earlier or whether or not that is the one that Judge Nixon was referring to me. I don't know that.

One might could surmise that or speculate in hindsight that that may well have been the case, but I have no way of knowing that. I don't know that. All I know is that after I had testified in the grand jury, that Mr. Holmes asked me if I had been questioned about the telephone call. I told him I had not.

Ms. NAUGHTON. Now, after Mr. Holmes did tell you about the phone call, did you go back to the Department of Justice and tell any of the attorneys or the FBI about the phone call?

Mr. INGRAM. I did not.

Ms. NAUGHTON. Why not?

Mr. INGRAM. Well, I don't know that I really understood at that point the significance that anybody was placing on the telephone call. No one in the Department of Justice had asked me about a telephone call. Rightly or wrongly—and I don't know whether it's right or wrong, but I perceived—I believed myself to be a fact witness in the case.

The Justice Department, all the time, all the way down through the whole process—I had freely given any information they wanted to have, they continually stated they had no problem with anything that I had to say, so I was a fact witness in the case.

I was not a prosecutor, I wasn't a person that was going out gathering up the rumors and gathering up the information, and to go submit it to the Justice Department. Had I believed at that time that that was something important to the Justice Department or that someone would have felt like that I had a duty to tell the Justice Department, then I would have told them that I knew about the telephone call. But I didn't feel like I had a duty to do that and I was trying to do what was appropriate, I was trying to do what I was being called on to do by the Justice Department, even though it was difficult sometimes.

Ms. NAUGHTON. Now, did there come a time that your support staff in your office was subpoenaed by the Federal Government?

Mr. INGRAM. Yes.

Ms. NAUGHTON. And did you travel to Washington, DC., to meet with Reid Weingarten to find out what it is they wanted?

Mr. INGRAM. I certainly did, because even after my grand jury testimony, the first time in July, which was an ordeal that I did not anticipate and that I didn't have any idea was going to be in the atmosphere that it was in—but even after that, even after that, Mr. Richter had told me and told my lawyer that he had no problem with my testimony and for me not to worry about it—told my lawyer, Joel Blass, that.

Here I am then, six months later, the end of December or January the 1st, and all of a sudden with no announcement, no contact, my staff in my office is subpoenaed to appear before the grand jury. You bet I got upset about that. You bet I did.

And so I called Mr. Blass and I said, "I don't understand what's going on, and I think you and I need to catch a plane in the morning and go to Washington and find out what's happening, because I don't like having my staff subpoenaed and I don't know about it, when I have been in a posture from the very beginning of cooperating fully, giving every piece of information that I know." Nobody had to subpoena anything out of me. Nobody had to command me to do anything. Then all of a sudden they start subpoenaing my staff and I don't even know about it.

Surely they had the right to do that, but I could have received a telephone call that said these are the reasons why we are doing it. But I didn't.

So I went to Washington with Joel Blass to find out what the situation was.

Ms. NAUGHTON. Now, did you come to learn at that meeting or at a later time that the Government was interested in learning more about the telephone call from Bud Holmes' farm?

Mr. **Ingram**. We couldn't find out what the problem was with the Government. Mr. Blass and I got back to the airport and he called the lawyer who was representing Mr. Fairchild or had represented Mr. Fairchild, named Mr. Hess, and said, "What's happening, what's going on?"

In that conversation Mr. Hess asked Mr. Blass if I knew anything about the telephone call from the farm to Mr. Fairchild. Mr. Blass got off the phone, walked back out into the seating area where we were about to board the plane, and said, "Do you know anything about the telephone call?"

I said, "I sure do. Mr. Holmes told me about the telephone call."

So he said, "Well, that might be important to the situation. Mr. Hess seems to think that's important."

So we go back home and the next day Mr. Blass called Reid Weingarten and in their conversation told him or asked him if that telephone call was of any significance, and he said it was, and he told him at that time that I knew about the telephone call having been made and that I knew about that from Mr. Holmes. And so Mr. Weingarten on his next appointed trip to Mississippi came and talked to me and I told him, yes, I did know about the telephone call, that Mr. Holmes had told me about the telephone call.

From that point on, I'm saying to you from that point on, I didn't have the first problem with the Justice Department after that, once—for some reason it seemed that when I expressed that I knew about the telephone call, they were willing to accept everything I said about the facts in this case.

Ms. **Naughton**. So basically what you are saying is that you were not asked about the phone call and you came forward with that information on your own volition; is that correct?

Mr. **Ingram**. I didn't really come forward with it on my own volition, I really didn't. Mr. Blass discovered that they were concerned about the telephone call. The Justice Department knew about the telephone call months before—they knew about the telephone call before I did.

Ms. **Naughton**. I'm not asking that.

Mr. **Ingram**. OK.

Ms. **Naughton**. Let me ask it this way. Why did you tell the Government about the telephone call? Was it because you thought it was important information or because you thought it would get you off the hook?

Mr. **Ingram**. I didn't have any reason to be on the hook. And I wasn't on the hook.

I told the Government that I knew about the telephone call because that was important to the Government. It seemed to be important to the Government, and obviously it was.

Ms. **Naughton**. OK.

Now, in February of 1985, you received a letter or your attorney received a letter from Reid Weingarten clarifying your status in the investigation; is that correct?

Mr. **Ingram**. I—Mr. Blass and I, after that turn of events with the Justice Department, wanted to have a statement from the Justice Department that said what my status is. And we requested the letter.

Ms. NAUGHTON. This letter appears at tab 29 of the committee exhibits, and I would just like to read the pertinent portions of it and read Weingarten's response to Mr. Blass. "Based on comprehensive review of the facts marshaled to date in this investigation, we have no present intention of pursuing any criminal charges against Mr. Ingram, and we consider him, Mr. Ingram, to be a fact witness."

Is that the basics of your understanding with the Department of Justice?

Mr. INGRAM. My understanding with the Department of Justice from the beginning was that I was not a target, that I was not someone they were concerned about, and when the turn of events came of subpoenaing my staff, then I wanted to have something besides what somebody said, and we asked for the letter and got the letter.

Ms. NAUGHTON. Now, the letter was not offering immunity, was it?

Mr. INGRAM. It absolutely was not immunity.

Ms. NAUGHTON. You never received immunity from the Department of Justice; is that correct?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. Did you ever ask for it?

Mr. INGRAM. No.

Ms. NAUGHTON. OK.

Mr. INGRAM. I didn't need immunity. I had not committed any wrongful acts. Never have. Wasn't accused of it. And the Government didn't ever take that position that I had, but for the turn of events in this investigation, I didn't feel, in the posture of that investigation, with subpoenaing my staff and particularly after the treatment I got in the grand jury room.

Ms. NAUGHTON. What I am getting at, Mr. Ingram, it is a simple question, did the Government induce you in any way to tell them about the phone call by either offering immunity, telling you they wouldn't prosecute you or——

Mr. INGRAM. No.

Ms. NAUGHTON. Or threatening to prosecute you and then taking away that offer?

Mr. INGRAM. No. I told about the telephone conversation strictly as I told you. My lawyer learned that the Government considered that to be an important fact in this investigation and when he asked me if I knew about it, I told him yes, I knew about it. I was not trying to keep it from the Government. It wasn't something that I felt that factually should come from me.

I didn't know about the telephone call except through Mr. Holmes. I mean, he was the only person who told me about the telephone call.

Ms. NAUGHTON. After you told the Department of Justice attorneys about the phone call, and I take it you went back home, did Mr. Holmes come into your office and ask you what had transpired in Washington?

Mr. INGRAM. He did.

Ms. NAUGHTON. Did you tell him that you had told the Department of Justice about the phone call?

Mr. INGRAM. I did.

Ms. NAUGHTON. What was his response when you told him you told the Justice Department about the phone call?

Mr. INGRAM. He said that was bad. He regretted that. Hated that.

Ms. NAUGHTON. Did he say something to the effect, "You just got me indicted"?

Mr. INGRAM. No. I don't believe he did. We went through it with Mr. Fawer in the trial of the case. Mr. Fawer tried to get me to say that. I don't think that Mr. Holmes said that to me, but obviously he was concerned that I had confirmed that I knew about the telephone call from him. I can understand why he was concerned.

Ms. NAUGHTON. When you say you could understand that, was it your understanding from Mr. Holmes that he had been saying that he had not been testifying about the phone call, that he had withheld that information?

Mr. INGRAM. That is correct. I believed that even though I didn't absolutely know that.

Ms. NAUGHTON. Did he ever indicate to you why he was withholding that information?

Mr. INGRAM. No.

Ms. NAUGHTON. Conversely, did Judge Nixon ever tell you whether or not he had told the grand jury about the phone call?

Mr. INGRAM. I have never talked to Judge Nixon about his grand jury testimony. Judge Nixon called me the night this investigation started. The next time I spoke to Judge Nixon was in the hallway at his trial. The next time that I spoke to Judge Nixon was today at noon in the—or before noon, in the conference hall down the way. That is the only contacts I believe I have had with Judge Nixon since he called my house and gave me the information that the investigation had begun.

Ms. NAUGHTON. Were you aware at the time, however, that that—that after Judge Nixon finished testifying in the grand jury, he had issued or his attorney had issued a press release saying he had not spoken to any State prosecutor about the case?

Mr. INGRAM. Yes, I was aware of that. If it was public information.

Ms. NAUGHTON. When Mr. Holmes came to your office to ask you what had transpired in Washington about the phone call, did you have a discussion about whether or not he should just go ahead and tell the attorneys from the Justice Department about the phone call? Did you encourage him to do so?

Mr. INGRAM. I don't know whether or not—I don't know whether that is the proper context, but I think we did have a discussion that I said that I thought he ought to have his lawyers to contact the Justice Department and get whatever needed to be straightened out, get it straightened out. But, now, to sit here today and say, you know, that I encouraged him to do so or something, I just really—I don't remember those things.

Ms. NAUGHTON. Do you remember telling Mr. Holmes whether or not the Department of Justice informed there was nothing wrong or illegal about the phone call itself?

Mr. INGRAM. I think I may have said that. I have to think about it. I have said that to somebody, because they did.

The Department of Justice said the phone call in and of itself, that the parties have the right to make that telephone call and had the right to even have the discussion that they had, that they were not taking exception to that. I believe that was their position. I have said that to somebody. Whether or not I said it to Mr. Holmes or not, I really don't know, but I very well could have.

What was my testimony at my trial?

Ms. NAUGHTON. I don't believe you were asked that question.

Mr. INGRAM. OK.

Ms. NAUGHTON. Did Mr. Holmes in any way try to get you to retract your testimony—excuse me, what you had told the Department of Justice attorneys about the phone call?

Mr. INGRAM. Mr. Holmes came back to my office a couple days later and he said in the course of conversation, "I think you are mistaken about what I said about the telephone call. I think that what I did say about the telephone call was a statement made by someone else."

And he and I had a discussion at that time, and I said to him, "That is not my understanding of what the facts are about the telephone call. I can't make a different statement about that if I don't believe that to be the facts."

Ms. NAUGHTON. What was his response to that?

Mr. INGRAM. His response was kind of, well, if that is your position, then so be it, or if that is your position, then that is your position.

It was not unfriendly. It was not confrontive. It was—that was just the statement.

Ms. NAUGHTON. Did he indicate what he planned on telling the grand jury about the phone call?

Mr. INGRAM. Not to me he didn't.

Ms. NAUGHTON. Now, prior to telling the Department of Justice attorneys and your own attorney about the phone call, did you discuss what you had learned with anyone else about the phone call?

Mr. INGRAM. I don't think so. You know, I could have said something to one of the lawyers in the law office about it or something like that, but I didn't remember, I don't remember having told anybody about it.

I did my best during that trial—I mean during that investigation, to have as little to talk about that instance as I could. I didn't talk on the street about it. I really didn't talk that much in my law office about it, because I had an ongoing law practice and I did my best to attend to my business at hand and not be talking about the investigation.

Ms. NAUGHTON. On or about the time that Judge Nixon was telling—if we can jump back for a moment—when Judge Nixon was telling you about having spoken to Bud Holmes about Drew's case, contemporaneous with that conversation, had Judge Nixon indicated to you that he was hopeful of entering into other investments with Mr. Fairchild?

Mr. INGRAM. I think he and Mr. Fairchild had ongoing discussions at that time about other possible investments, yes.

Ms. NAUGHTON. And did he indicate to you that he wanted you to be in the posture of helping him with other mineral interests or other transactions in the future with Wiley Fairchild?

Mr. INGRAM. He didn't—I don't think that he told me that. I think that he knew my relationship with Mr. Fairchild and he knew my relationship with him and he was comfortable in telling me that and he knew that if I could be helpful to him appropriately that I would.

Ms. NAUGHTON. OK.

Mr. Ingram, I take it you were never indicted by any Federal or State grand jury over what we have just discussed?

Mr. INGRAM. Why, absolutely not. There was no cause for me to be indicted.

Ms. NAUGHTON. And I take it then, of course, you are a member in good standing of the bar? In other words, you didn't receive any legal discipline or anything of that sort?

Mr. INGRAM. I am a member in good standing, have received no legal discipline, no complaint, no nothing, and there is no reason for me to receive such.

Ms. NAUGHTON. Now, I want to ask you, was there a time when, in the early 1980s, sometime in the early 1980s, when Judge Nixon was in Hattiesburg and needed the services of a dentist?

Mr. INGRAM. Yes, and I don't know whether or not he was in Hattiesburg when I received the call about his going to see Dr. York or not. I believe he was. I will have to refresh my memory from my earlier testimony.

Ms. NAUGHTON. But did there come a time when he asked you to recommend someone because he needed some dental work in Hattiesburg?

Mr. INGRAM. I think so, and I am not sure if he already had the name of Dr. York and asked me about him or whether or not I gave him the name of Dr. York. But I arranged an appointment with Dr. York and Judge Nixon at some point in time. The record would show what that was.

Ms. NAUGHTON. Was that appointment made a few days in advance or was that made on the day that Judge Nixon actually went to Dr. York?

Mr. INGRAM. I think it may have been made a few days in advance, but I need to check my testimony about that. Ordinarily, you would think of somebody going to the dentist because they have a toothache, and it would be an immediate thing. But I don't know whether or not that it was made a few days in advance or not.

Ms. NAUGHTON. At any rate, do you recall driving Judge Nixon to see Dr. York?

Mr. INGRAM. I either drove him or met him there.

Ms. NAUGHTON. So you don't have a specific recollection of actually driving there?

Mr. INGRAM. I could have driven him there, but I have a feeling I left Judge Nixon at the office, is what I have a feeling that I did.

Ms. NAUGHTON. On that occasion——

Mr. INGRAM. What was my testimony before about that?

Ms. NAUGHTON. I believe it was that you drove him there.

Mr. INGRAM. Is that correct?

Mr. KEITH. Yes.

Mr. INGRAM. I very well could have driven him.

Ms. NAUGHTON. Do you recall on that occasion if he had his own car in Hattiesburg?

Mr. INGRAM. I don't recall one way or the other.

Ms. NAUGHTON. Do you just recall one time where you either drive him or met him at Dr. York's?

Mr. INGRAM. There was not but one time.

Ms. NAUGHTON. Do you know what arrangements were made for payment?

Mr. INGRAM. No idea. That was totally out of my—I wasn't responsible for that. That was between he and Dr. York, and please know I just know who Dr. York is. I don't represent him. He is not a social friend of mine. He isn't—I mean, he is a fine oral surgeon, a very successful developer and businessman, but he is not my client, and wasn't my client then.

The recommendation of Dr. York or the taking to Dr. York was strictly on the basis that if you ask me who the finest oral surgeon was in Hattiesburg, that is who I would say he is, and we have some others that are fine, but Bennett York has a tremendous reputation in that area.

Ms. NAUGHTON. Also, do you have any recollection of either going with Judge Nixon or driving him to and accompanying him to Bud Holmes' office sometime in May of 1982?

Mr. INGRAM. No. I did not do that.

Ms. NAUGHTON. Have you ever been in Bud Holmes' office with Judge Nixon?

Mr. INGRAM. I do not recall doing that. I don't believe I have. I have been questioned about that by the prosecutors, and have served my mind, and I don't believe I have been in Bud Holmes' office with Judge Nixon. I do not believe I have.

Ms. NAUGHTON. Finally, my last question is, regarding the oil transaction that we went into between Judge Nixon and Wiley Fairchild, did you receive any fees or profits for the services that you rendered in that case?

Mr. INGRAM. None whatsoever. I didn't consider I rendered services.

Ms. NAUGHTON. Don't you think filing the deed was a service to someone?

Mr. INGRAM. Well, perhaps. You know, maybe down home where we are you do a lot of things for a lot of people. I record deeds and I do things for people that they never get a bill for endlessly, and I am happy to do it.

Ms. NAUGHTON. OK. To the best of your knowledge, maybe other than getting recording fees back, you did not receive any fees or payment for services?

Mr. INGRAM. And I don't really think I got the recording fees back. My office as a routine matter could have put them on the Fairchild bill and we got them back, but I don't even know that.

Ms. NAUGHTON. Thank you very, very much, Mr. Ingram.

Thank you, Mr. Chairman.

Mr. INGRAM. Thank you.

Mr. EDWARDS. Thank you, Ms. Naughton.

We are going to give Mr. Holleman all the necessary time, but I have a couple of quick questions first.

In the indictment of Judge Nixon, count one, paragraph B, 3-B, says that the Defendant, Walter L. Nixon, subsequent to the initial question referred to the previous paragraph, "frequently and persistently urged Carroll Ingram to see to it that the Defendant, Walter L. Nixon was placed in an oil deal." Is that an accurate statement, "frequently and persistently"?

Mr. INGRAM. I think I need to basically summarize my testimony about that. I think that is a very strong statement.

Mr. EDWARDS. Yes. Do you think it could be an overstatement?

Mr. INGRAM. Yes, sir, I do.

Mr. EDWARDS. That is not that important, but we have your testimony.

Mr. INGRAM. Yes.

Mr. EDWARDS. It seems to me to be rather an overstatement.

Mr. INGRAM. Yes.

Mr. EDWARDS. You would agree?

Mr. INGRAM. Yes, sir.

Mr. EDWARDS. Then it says, "The Defendant, Judge Walter L. Nixon, Jr., received mineral royalty interest from Wiley Fairchild worth far more than any consideration the Defendant, Walter L. Nixon, Jr., paid for the interest."

What is wrong with somebody getting dividends from a good investment?

Mr. INGRAM. At the time that this transaction was made, it is my honest, forthright, absolute belief and knowledge that the oil transaction which Judge Nixon purchased was purchased for a fair market value.

No one, Mr. Fairchild or anybody in his office or Judge Nixon or anyone else, ever indicated to me to the contrary, and so I believe completely that Judge Nixon purchased the minerals and that he paid a fair market price for the minerals. I believe that.

On top of that, I believe that the jury believed that when I got through testifying. And they acquitted Judge Nixon totally on that charge.

Mr. EDWARDS. Thank you.

On the next page of the indictment it says that Judge Nixon paid off the three promissory notes only after receiving royalty payments of larger amounts from Wiley Fairchild.

Actually, those notes were not due for three years, so he prepaid the notes.

Mr. INGRAM. He prepaid the notes, that is right. It didn't matter whether or not they came from oil production, oil royalty or whether they, the payment came out of his salary or out of his savings account or borrowed money from another bank. The notes were due at the date of the due date in the notes.

Mr. EDWARDS. Why do you suppose Mr. Weingarten put that in the indictment?

Mr. INGRAM. I don't know, sir.

Mr. EDWARDS. Did it bother you at all that he did?

Mr. INGRAM. Yes, sir, a lot, a lot bothers me.

Mr. Chairman, from the day I was interviewed the first time in this case, I said to the prosecutors, there is no connection in this case of the royalty transfers to that drug case. There is not one shred of evidence anywhere that there is a connection between that transaction and the drug case. There is not one shred of evidence anywhere that there was a gratuity or a gift or a payment of less than fair value.

I stated that to the prosecutors with great difficulty, and in my judgment and in the jury's judgment, that was not an appropriate charge to be made against Judge Nixon. And I am not here to defend anybody or to take up any cause for anybody, but I do want the record straight on what I believe the facts to be, and I believe that the jury heard my testimony and I believe the jury followed my testimony on that charge. So, no, sir, I don't think that was a meritorious charge in the indictment.

Mr. **Edwards**. Mr. Weingarten must not have understood that. Why did he put it in then?

Mr. **Ingram**. I don't know, sir.

Mr. **Edwards**. You had this one conversation with Judge Nixon wherein he said something about his speaking to Mr. Holmes, correct?

Mr. **Ingram**. Yes, sir. Yes, sir.

Mr. **Edwards**. What was your understanding of what Judge Nixon asked of Mr. Holmes?

Mr. **Ingram**. That he convey his concern about the case and asked for consideration of the situation, and, Mr. Chairman, in that telephone conversation, it was almost an implied statement. Judge Nixon didn't go into any detail about that. He just simply let me know that he had been requested to make that inquiry, and that was it.

When the telephone conversation was over with, I was not really sure what the message was. It's only in the context of after-acquire knowledge, where you do know that, that you can relate that back to having a knowledge about it.

Mr. **Edwards**. "Would you put in a good word for the boy?"

Mr. **Ingram**. That's correct.

Mr. **Edwards**. A 55-year old boy?

Mr. **Ingram**. Yes, sir, 55 years old. In my thinking there was nothing—that matter wasn't in his Court. He had a right to do that. There wasn't anything wrong with his doing that. I don't think there is anything wrong ethically, morally, legally, or anything else. I think Judge Nixon had a perfect right to say to Bud Holmes, whom he had known for a long time, "I'm interested in seeing that this man's treated fair." I mean, he had no jurisdiction over the District Attorney of Forrest County.

Mr. **Edwards**. We are asked in connection with the work here in Congress, every once in a while, to write a Judge about a local family, that they are good folks, and we have known them all our lives. There is nothing wrong with that.

Mr. **Ingram**. Mr. Chairman, I do that routinely. I mean, I am not even employed in the case, but yet I have a large family connection that—down south we all know each other. Our families are large families. And so I get a call that a family member had one of their children on a drug case. I'm not even the lawyer, and so they say, "Please inquire about what the status of the case is. Is there any way you can help us?" And so I call the District Attorney's office and say, "What is the deal on the Jones kid? Or on the Ingram kid?" Or whoever it may be. And, "Look, it's a fine family, the kid's never been in trouble before." Mr. White, or Glenn, as I would call him, who is our DA, I'd say, "Glen, let's do the best we can. Let's don't do more than we have to do in this case. Can't you find some way to help this family?"

I do that all the time. I don't see anything wrong with Judge Nixon doing that. And I'm aware there's a canon that says you don't use your judicial office for the wrong influence. I am aware of that canon. I don't consider that using your judicial office when it is on a personal basis.

Judge Nixon and Mr. Holmes were personal friends. I don't think that Mr. Holmes was at any time saying, "I'm being pressed by a Federal judge's office to take some action." I don't more believe that than anything.

Mr. **Edwards**. Thank you.

Mr. Boyce Holleman?

Mr. **Boyce Holleman**. Mr. Ingram, you have been a practicing lawyer for a long number of years in south Mississippi, haven't you?

Mr. **Ingram**. Twenty-one years.

Mr. **Boyce Holleman**. You are originally from Covington County, which is a little county north of Forrest County where the City of Hattiesburg is located?

Mr. **Ingram**. Yes, sir. South of Seminary.

Mr. **Boyce Holleman**. I believe you just told the chairman down south you have a lot of family, a lot of family connections, and you and Mr. Fairchild are second or third cousins, somewhere along that line.

Mr. **Ingram**. Yes, we are.

Mr. **Boyce Holleman**. Your families stretch up through Seminary, through Covington County and down into Forrest?

Mr. **Ingram**. I am kin to half the people in the southern part of Covington County, and I married into the Rogers family in the Northern part of the county. She's kin to half the people there.

Mr. **Boyce Holleman**. That goes up to Sullivan's Hollow?

Mr. **Ingram**. It does.

Mr. **Boyce Holleman**. Which is a pretty notorious area?

Mr. **Ingram**. It does.

Mr. **Boyce Holleman**. So you have—where the world champion tobacco spitting contest takes place?

Mr. **Ingram**. Yes, sir.

Mr. **Boyce Holleman**. The point is that there is a different relationship in that area where Mr. Holmes was District Attorney and had two counties in the district, and in that area south of there where I was District Attorney 19 years, some four or five counties, there are—those families were generally known in that area is what I am saying?

Mr. **Ingram**. Most everybody knows everybody's family. I know that's hard for people who come from large metropolitan areas to understand; but we virtually know everyone in our whole area. It is just incredible that you—it is a—it is a different setting.

Mr. **Boyce Holleman**. You have been rather successful politically? When you ran for the Senate, you were elected and re-elected and voluntarily resigned from the political fray on your own in 1979?

Mr. INGRAM. I chose not to run for re-election out of my own personal interests.

Mr. BOYCE HOLLEMAN. All right.

Mr. INGRAM. And for no other reason.

Mr. BOYCE HOLLEMAN. I believe it has been pointed out you were chairman of the Judiciary Committee in the Mississippi State Senate, a rather important position?

Mr. INGRAM. I was. One of the three largest committees in the Senate.

Mr. BOYCE HOLLEMAN. And you have had and do have and continue to have a rather successful law practice in the City of Hattiesburg?

Mr. INGRAM. I do.

Mr. HOLLEMAN. Now when this matter first arose, of course, you have a television station there, WDAM, channel 7?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. You have channel 13 down on the Coast?

Mr. INGRAM. yes, sir.

Mr. BOYCE HOLLEMAN. And you have channel 3, 12, whatever, Jackson to the north? And you have Meridian, just in the area Judge Nixon serves?

Mr. INGRAM. That's correct.

Mr. BOYCE HOLLEMAN. When this matter began to be street conversation in Hattiesburg, there was a great deal of interest in it, wasn't there?

Mr. INGRAM. Oh, yes, sir. I mean, no question about that.

Mr. BOYCE HOLLEMAN. Now when—and then, of course, the word got out that the Petit Bois, the investigation of the Petit Bois matter from Florida had been transferred from the grand jury in Tampa, Florida, I believe, into this special grand jury in Hattiesburg where the Nixon case was being considered; you knew that, didn't you?

Mr. INGRAM. I knew that the Petit Bois case was under the purview of this grand jury, yes, sir.

Mr. BOYCE HOLLEMAN. And you knew all of that was in there. There was a great deal of publicity about that.

Mr. INGRAM. Unbelievable.

Mr. BOYCE HOLLEMAN. Unbelievable publicity. Day after day.

So in the meantime, of course, sometime in 1980, this drug bust occurred in which Drew Fairchild, Wiley's son, was directly or indirectly involved as the airport manager; that happened along about 1980, preceding these events, did it not?

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. And, of course, there was some publicity primarily because of the amount involved and the name Fairchild?

Mr. INGRAM. Yes. I believe that I was even mistaken up until well into the trial about some of that. I had thought that there was publicity about the arrest of Drew Fairchild. Drew Fairchild was never arrested publicly. And there wasn't any publicity about that.

The publicity came after it became a matter on the State Court docket.

Mr. BOYCE HOLLEMAN. As a matter of fact, that is what I was about to ask you. Drew Fairchild was not charged originally in that drug bust, was he?

Mr. INGRAM. That's what I later learned. That's correct.

Mr. BOYCE HOLLEMAN. The real publicity in the local area and the Hattiesburg American, which is your local paper there, and the local press started after Drew was charged by Mr. Holmes in the State case, is that correct?

Mr. INGRAM. That's correct.

Mr. BOYCE HOLLEMAN. All right.

Mr. INGRAM. I believe that's correct. I think, if you look at the records, that will bear me out.

Mr. BOYCE HOLLEMAN. Well, now, when this matter first came up for investigation and Mr.—there was a Mr. Richter involved, was there not?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. Bob Richter?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. Your first dealings were with Mr. Bob Richter and Mr. Reid Weingarten?

Mr. INGRAM. Really Mr. Richter.

Mr. BOYCE HOLLEMAN. Mr. Richter. You, Mr. Weingarten—Mr. Richter, and Mr. Weingarten in the initial stage of this case, they came down, when you first understood after Judge Nixon called you and was upset about it, which was your first knowledge that anybody was charging any wrongdoing——

Mr. INGRAM. Correct.

Mr. BOYCE HOLLEMAN. —on the part of Judge Nixon, whenever—you sat down for the first time with Mr. Richter, Bob Richter, Mr. Weingarten was there, wasn't he? You don't remember?

Mr. INGRAM. I'm not sure that he was there the first time. It seems to me Mr. Weingarten came into this investigation as it—in conversations with me later.

Mr. BOYCE HOLLEMAN. Now the FBI interviewed you. There was a 302 prepared. Was Richter there when the FBI interviewed you?

Mr. INGRAM. I don't believe he was. Wait a minute. Wait a minute. Wait a minute. Wait a minute. I think Mr. Richter was there when the FBI interviewed me. The 302 would show that.

Mr. BOYCE HOLLEMAN. I am not trying to trap you. I am just trying to lead up to it. Did you or did you not tell them immediately when you realized they were trying to make some tie-in between these purchases of these royalty interests by Judge Nixon from Mr. Fairchild and the Drew Fairchild case, did you not emphatically tell them at that time, "If you are trying to connect up the oil and gas soil, royalty interest sail to Judge Nixon, with the Drew Fairchild case, you are on entirely the wrong track"?

Mr. INGRAM. Told them that from day one.

Mr. BOYCE HOLLEMAN. You told them that on day one. And——

Mr. INGRAM. And I told them that until the last day.

Mr. BOYCE HOLLEMAN. Until the last day. Until today you said that?

Mr. INGRAM. Until today.

Mr. BOYCE HOLLEMAN. You explained that, and you told that to Mr. Richter, and you told him why?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. All right. But the investigation continued; is that correct?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. All right. Then Mr.—you were called after you had told them about that, you, of course, because of the confusion, you went down and hired Mr. Joel Blass.

Mr. INGRAM. When I was interviewed, then I knew at that point, not out of a sense of fear, but out of a sense of good judgment, that I needed as fine a lawyer as I could find to advise me, and I engaged Joel Blass.

Mr. BOYCE HOLLEMAN. You hired Mr. Joel Blass. So the committee may know who Mr. Blass is, Mr. Blass started off in my home town of Wiggins, is now practicing in Gulfport and is a former associate at the University of Mississippi Law School, is that correct?

Mr. INGRAM. Mr. Joel Blass is 70 years old, is a member of the American College of Trail Lawyers. He is an American of national prominence for competence and integrity and he is the only person I know that's been offered the deanship of both the law schools in our State.

Mr. BOYCE HOLLEMAN. That is correct. So you had a lawyer—he does not try any criminal cases?

Mr. INGRAM. He's not a criminal lawyer.

Mr. BOYCE HOLLEMAN. He is not a criminal lawyer. But he is a lawyer of very high integrity?

Mr. INGRAM. He is indeed.

Mr. BOYCE HOLLEMAN. So you associated Mr. Blass?

Mr. INGRAM. Correct.

Mr. BOYCE HOLLEMAN. As the time came on for you to make your grand jury appearance—you were going to testify before the grand jury?

Mr. INGRAM. I was advised that the Government would like for me to testify as a fact witness before the grand jury.

Mr. BOYCE HOLLEMAN. You told them you would?

Mr. INGRAM. Told them they didn't have to subpoena me. I would be glad to be there.

Mr. BOYCE HOLLEMAN. Did you and Mr. Blass sit down with Mr. Reid Weingarten and Mr. Richter on the night before you were to testify the day before?

Mr. INGRAM. We did.

Mr. BOYCE HOLLEMAN. Where was that, in Hattiesburg?

Mr. INGRAM. In my office.

Mr. BOYCE HOLLEMAN. In your office. These were the gentlemen, Mr. Weingarten, Mr. Richter, Mr. Blass, and yourself; is that correct?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. And you were trying to find out what you—you said you would tell them everything you knew about the case?

Mr. INGRAM. That is correct.

Mr. BOYCE HOLLEMAN. You were—you absolutely wanted to be honest with them, and anything you knew about it, you told them that, didn't you?

Mr. INGRAM. I told them that, yes, sir.

Mr. BOYCE HOLLEMAN. Mr. Blass said, "If you have any deeds, let us look at the deeds", didn't he?

Mr. **Ingram**. I believe he said, if you had any documents, any information, anything that this man has not seen or anything that's going to be questioned about in the grand jury, then we want to see it tonight so that he can be familiar with it.

Mr. **Boyce Holleman**. "Show it to us and let us get familiar with it." You were sitting there with the people who were going to handle it in front of the grand jury the next day?

Mr. **Ingram**. That's right.

Mr. **Boyce Holleman**. Did they show you anything?

Mr. **Ingram**. They did not.

Mr. **Boyce Holleman**. They did not. So you appeared before the grand jury with the file you had in your office; is that correct?

Mr. **Ingram**. That's correct. I appeared in the grand jury under the impression that—almost that I was in the care of the Government, that I was in the care of the prosecutor. I totally and completely, forthrightly cooperated with them in every way, provided whatever information they wanted. They didn't have to subpoena anything out of me.

All they did was called and asked for whatever they wanted. And I went into that grand jury under the impression and with the firm belief that I had no problem whatsoever insofar as my testimony was concerned.

Mr. **Boyce Holleman**. All right. And, of course, Mr. Blass couldn't go with you under the law?

Mr. **Ingram**. No.

Mr. **Boyce Holleman**. He had to wait outside. When you got in the grand jury room and your testimony here is an exhibit up here, they began to question you about this mineral transaction of Judge Nixon's. You answered and told them what you knew about it, the deeds, and so forth; isn't that correct?

Mr. **Ingram**. That's right.

Mr. **Boyce Holleman**. You were under the impression there was only one set of deeds.

Mr. **Ingram**. Did not know that there was but one set.

Mr. **Boyce Holleman**. And when you got down to the end of your testimony, after you—the Government had brought you in there and after you had cooperated and offered to help in every way, they suddenly pulled out on you a brown envelope and some other deeds, didn't they? A second set of deeds?

Mr. **Ingram**. They did.

Mr. **Boyce Holleman**. After you had completely testified that these were the only deeds and these were the deeds that you prepared and given the testimony as best you knew it to the truth; isn't that right?

Mr. **Ingram**. Because I honestly believed those were the deeds that I had sent back to Mr. Fairchild and asked to be corrected. I thought they were corrected and sent back to me.

Mr. **Boyce Holleman**. And all the time Mr. Weingarten and Mr. Richter had sitting there, through the conference with you and Mr. Blass and throughout your grand jury testimony, this other set of deeds, didn't they?

Mr. **Ingram**. Yes, sir.

Mr. BOYCE HOLLEMAN. And they had a brown envelope that had your handwriting on it that you had forgotten about, where you had sent the deeds back, didn't they?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. There was no reason for you not to say anything about those deeds if you remembered, if you had known there were two sets?

Mr. INGRAM. If I had known there were two sets, I would have been glad to say there were two sets.

Mr. BOYCE HOLLEMAN. In the presence of the 23 people on the grand jury, and asked you if you would be willing to give your finger prints to the grand jury so they could check your finger prints on this envelope, isn't that right?

Mr. INGRAM. Yes sir.

Mr. BOYCE HOLLEMAN. And you found yourself in the position of being the criminal rather than the witness?

Mr. INGRAM. Well, I thought I found myself in a very undesirable atmosphere.

Mr. BOYCE HOLLEMAN. And it was an undesirable atmosphere, wasn't it?

Mr. INGRAM. At that point it was, yes.

Mr. BOYCE HOLLEMAN. And if you read what these grand jurors said when you left the grand jury room, you understand that, don't you?

Mr. INGRAM. Yes, sir, you do.

Mr. BOYCE HOLLEMAN. So in that atmosphere, Mr. Ingram, did you tell them—did that occur after you explained to them completely that in your opinion there was no connection between these two?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. But it persisted?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. Then you went back to get an explanation of those deeds? You wanted to explain?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. The deeds you sent back were made to conform to the date of 1980 at the time of the transaction. I won't review all of that. And they—81 deeds had been sent back. Acreage was conformed to what you understood it to be. Was anything wrong with any of that at all?

Mr. INGRAM. Not the first thing wrong. Not one bit of it.

Mr. BOYCE HOLLEMAN. You explained every bit of it to Mr. Weingarten?

Mr. INGRAM. I did.

Mr. BOYCE HOLLEMAN. Mr. Weingarten took over the case, didn't he?

Mr. INGRAM. He did.

Mr. BOYCE HOLLEMAN. Mr. Richter got out?

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. Mr. Weingarten got into the driver's seat?

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. I believe you said if you thought Mr. Richter had stayed in, we wouldn't be here?

Mr. INGRAM. Well, I don't know that I said that, Mr. Holleman.

Mr. **Boyce Holleman**. What did you say?

Mr. **Ingram**. OK. I felt like that Mr. Richter—I felt like that Mr. Richter regretted what he did in the grand jury. In fact, he basically apologized to me after it was over with, told me and my lawyer, Mr. Blass, that for me not to worry about that grand jury, that he was doing his duty, and that there was no cause whatsoever for me to be concerned or worried about it.

Mr. **Boyce Holleman**. But when you left out of there, according to the transcript before this committee, the grand jury was talking about you either going to give finger prints or we are going to order you to do it?

Mr. **Ingram**. Yes, sir. And I was willing to give finger prints if that's what they wanted. Nobody requested that of me. The reason I felt aggrieved about the grand jury process was that had somebody said to me before I went into the grand jury, "What about this envelope, what about this second set of instruments", I would have been glad to have testified to about it. If somebody then would even have said, "We need to have your finger prints", I'd have been happy to—I'd have been glad to give my finger prints.

Mr. **Boyce Holleman**. All they needed your finger prints for was to show whether or not you sent the envelope back out there. You would have been glad to tell them that?

Mr. **Ingram**. I admitted I sent the envelope back out there. Wasn't any question about that.

Mr. **Boyce Holleman**. But you didn't get that opportunity to do that?

Mr. **Ingram**. To do what?

Mr. **Boyce Holleman**. To tell them the truth about it? You were not asked questions?

Mr. **Ingram**. Not really.

Mr. **Boyce Holleman**. Mr. Blass was upset about that, too, I take it?

Mr. **Ingram**. He was very upset.

Mr. **Boyce Holleman**. They dealt with one of the most respected lawyers in that section of the country, if not the United States, and dealt unfairly with that lawyer and with his client, hadn't they?

Mr. **Ingram**. Mr. Blass was upset about the treatment I had received.

Mr. **Boyce Holleman**. I am sure he was.

Now then there came a time, after you began to get this matter straight, where you went back before the grand jury. How many times did you go?

Mr. **Ingram**. I went—I appeared before the grand jury two times.

Mr. **Boyce Holleman**. Two times. Did the second appearance before the grand jury proceed—did the precede your trip to Washington, or was it after?

Mr. **Ingram**. It was after my trip to Washington.

Mr. **Boyce Holleman**. So you were getting ready to come to the grand jury?

Mr. **Ingram**. I didn't know at that time I was going to the grand jury.

Mr. **Boyce Holleman**. You didn't know you were going to go back to the grand jury?

Mr. INGRAM. No. At the time I came to Washington, I didn't know what was going on. I didn't know I was going back before the grand jury or what.

Mr. BOYCE HOLLEMAN. Had you been given an opportunity to straighten out your testimony about the extra set of deeds or anything at that time?

Mr. INGRAM. No. Mr. Richter said there was no concern about that. There wasn't a problem with it, for us not to worry about it. We requested an opportunity to do that.

Mr. BOYCE HOLLEMAN. At that time, your testimony, as it stood before the grand jury, denied the existence of a second set of deeds, didn't it?

Mr. INGRAM. Except to the extent in my grand jury when they showed the second set of deeds that I said, "If there's a second set of deeds, these are the set—that is the second set." I didn't deny the existence of them after they showed them to me.

Mr. BOYCE HOLLEMAN. After they showed them to you?

Mr. INGRAM. That's correct. But I said in the beginning that I was not aware of any second set of deeds. And I wasn't.

Mr. BOYCE HOLLEMAN. There was serious questions hanging there really in the form of a trap into which you had walked, weren't there? Is that a fair statement?

Mr. INGRAM. Mr. Holleman, you are a very fine lawyer, and I think you can take my transcript of my grand jury which you have, and you said is an exhibit in the—in this case, and you can make that judgment about what it is.

Mr. BOYCE HOLLEMAN. I have taken it. I do make that judgment. Do you agree with it?

Mr. INGRAM. Well, I have not ever said that. I have not ever made that claim.

Mr. BOYCE HOLLEMAN. I won't make you say that.

Mr. INGRAM. I have not made that allegation.

Mr. BOYCE HOLLEMAN. I won't make you say that.

In preparing to go to the second grand jury, all of a sudden you find out your whole staff is subpoenaed.

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. And so that's when you come to Washington with Mr. Blass?

Mr. INGRAM. That's correct.

Mr. BOYCE HOLLEMAN. Counsel has been through that. I will not go back through it except for what happened. I think she went over what happened here. Except when you left here going to the airport, you still felt you were in trouble, didn't you?

Mr. INGRAM. I still felt that I was not receiving answers from Mr. Weingarten concerning his satisfaction about all of these matters, about statements that I had made, about my grand jury testimony, that sort of thing.

Mr. BOYCE HOLLEMAN. Did anybody ever tell you they were looking for a smoking gun?

Mr. INGRAM. No.

Mr. BOYCE HOLLEMAN. So you got back to the airport, and then what, you related what ensued about Mr. Blass' call and so forth. Then this conference was set at Gulfport?

Mr. INGRAM. Yes.

Mr. **Boyce Holleman**. You told him about the phone call that Mr. Holmes related to you?

Mr. **Ingram**. That's correct.

Mr. **Boyce Holleman**. When you got through with that conference, this wasn't—was Mr. Richter there?

Mr. **Ingram**. No.

Mr. **Boyce Holleman**. Mr. Weingarten had taken over the case?

Mr. **Ingram**. Yes.

Mr. **Boyce Holleman**. Mr. Weingarten told you, Mr. Ingram, from now on you are going to be my yardstick in this case, what you say will be my yardstick.

Mr. **Ingram**. He told me——

Mr. **Boyce Holleman**. Tell me what he said.

Mr. **Ingram**. I don't know that it was that day that he told me that.

Mr. **Boyce Holleman**. All right.

Mr. **Ingram**. But soon after that, he told Mr. Blass and me that based on his examination of the facts in this case, that as far as he was concerned my statement about the facts in this case was and would be the measuring stick in this case.

Mr. **Boyce Holleman**. The measuring stick in this case?

Mr. **Ingram**. Yes, sir.

Mr. **Boyce Holleman**. And the measuring stick that you had—the facts you had given and the measuring stick which Mr. Weingarten told you and Mr. Blass he was assuming, was the same measuring stick you started with in the beginning and still state today, that there was absolutely no connection of any kind whatsoever between these royalty deeds and Drew Fairchild's case? That was the measuring stick, wasn't it?

Mr. **Ingram**. That's accurate. That's correct.

Mr. **Boyce Holleman**. But he didn't adopt that measuring stick, did he?

Mr. **Ingram**. Well, not in that context, he did not.

Mr. **Boyce Holleman**. Well, he proceeded on, brought you back in front of the grand jury; isn't that correct?

Mr. **Ingram**. Yes, he did.

Mr. **Boyce Holleman**. And proceeded to indict Judge Nixon on the basis that he had accepted mineral deeds to assist with the purchases of gratuity to assist in the Drew Fairchild case, exactly what you had told him was not the truth?

Mr. **Ingram**. That's correct.

Mr. **Boyce Holleman**. And that became count 1. And the big count on which Judge Nixon went to trial on, wasn't it?

Mr. **Ingram**. No question about that. I assumed that was the only count.

Mr. **Boyce Holleman**. That was it.

Mr. **Ingram**. In terms of importance.

Mr. **Boyce Holleman**. Everybody assumed that. That was the big—weren't these mineral deeds flashed on every TV screen in South Mississippi a dozen times? Isn't that true?

Mr. **Ingram**. I think more than a dozen times.

Mr. **Boyce Holleman**. Probably so. I am probably being conservative. That was the big thrust of this whole case, wasn't it?

Mr. **Ingram**. Yes, it was, sir.

Mr. **Boyce Holleman**. That's exactly what you had told them from the beginning and told Mr. Weingarten was not the case, wasn't it?

Mr. **Ingram**. Yes, sir. No question about it.

Mr. **Boyce Holleman**. But when you finally got to the jury after they put this all in, and I think you stated it here, and looked the jury in the face and told them that story, they accepted your measuring stick, didn't they?

Mr. **Ingram**. They sure did.

Mr. **Boyce Holleman**. But it was all in there, a trial had gone on now for how many weeks, three weeks?

Mr. **Ingram**. A long time.

Mr. **Boyce Holleman**. Three weeks. About 90 percent of it consumed around these mineral transfers and Judge Nixon getting illegal payoffs, Wiley Fairchild, so forth and so on.

Mr. **Ingram**. Horrible.

Mr. **Boyce Holleman**. By the way, let me ask you something about that just as a matter of interest. When Wiley Fairchild testified in the Hattiesburg case, and while the jury was out, isn't it a fact that he came back down to the Court House and gave out an interview in front of the Court House on public television where he on the steps of the Court House—in the hallway of the Court House—did he give an interview in the hallway of the Court Room while the jury was deliberating repudiating everything he said and saying Judge Nixon was a fine man, saying he was innocent and should be acquitted?

Mr. **Ingram**. He did.

Mr. **Boyce Holleman**. He did do that?

Mr. **Ingram**. He sure did.

Mr. **Boyce Holleman**. While the jury was still out?

Mr. **Ingram**. I think you can get a transcript of it from the television and newspaper.

Mr. **Boyce Holleman**. May I do that?

Mr. **Ingram**. And he just testified two days in the court a couple of weeks before that.

Mr. **Boyce Holleman**. He wasn't too well, I hear?

Mr. **Ingram**. Sir?

Mr. **Boyce Holleman**. He wasn't too well physically?

Mr. **Ingram**. Oh, I don't know about his physical——

Mr. **Boyce Holleman**. Now, let me just ask you about a few things. Do you recall an occasion when Bud Holmes met you on the street and told you that Wiley was happy and was on cloud nine about the Drew Fairchild case?

Mr. **Ingram**. I don't specifically remember that. What I do remember—let me tell you what I do remember. I believe that after Judge McKenzie—and at one time I thought the District Attorney went too, but I later learned that he didn't—Judge McKenzie and Mr. Holmes went out to see Mr. Fairchild during the time that this case was on the State Court docket, then Wiley Fairchild told me after that that he was pleased about that visit and that he thought that things were going to be OK.

Mr. **Boyce Holleman**. The point is that at the time when Mr. Holmes—when you talked to Mr. Holmes, or about that time, when he said Wiley was on cloud nine, that had to do with the visit of the newly-elected Circuit Judge and the District Attorney—outgoing District Attorney——

Mr. Ingram. I have learned later—I don't believe Glenn White was at that meeting.

Mr. Boyce Holleman. I mean Holmes.

Mr. Ingram. Excuse me. OK.

Mr. Boyce Holleman. I mean Holmes.

Mr. Ingram. OK.

Mr. Boyce Holleman. But it had to do with that visit, didn't it?

Mr. Ingram. Yes, it did.

Mr. Boyce Holleman. It wasn't about the passing of the case to the file, was it, at all?

Mr. Ingram. I believe that's correct, yes.

Mr. Boyce Holleman. Did Mr. Holmes—the day he took Judge McKenzie out there to Mr. Fairchild's office to talk to Mr. Fairchild, did he call you about that before he went out there in the morning?

Mr. Ingram. No, he did not.

Mr. Boyce Holleman. He did not?

Mr. Ingram. I believe—and I think my previous testimony will bear that out, Mr. Holleman, that some time in the course of that statement, when that case—Drew Fairchild case was on the State docket, that Mr. Fairchild did express to me his frustration and his concern about the case being in the press and in the media; and I believe that I have testified before that I more than likely conveyed that to Bud Holmes.

In other words, in a conversation I had with Bud Holmes that I may well have said that Mr. Fairchild is upset about this case being on the State docket in the press.

Mr. Boyce Holleman. I am sure he was.

Let me ask you about that. Wasn't there another factor involved in that? Mr. Jack Weldy, who was the Circuit Judge, had just been in a very hot race with Dickey McKenzie who defeated him. As a matter of fact, I think there was some malpractice suits that some of the doctors were upset about, verdicts, what have you. It led to the defeat of Judge Weldy, didn't it?

Mr. Ingram. That's correct.

Mr. Boyce Holleman. Dickey McKenzie, who was the county judge, defeated him?

Mr. Ingram. That's correct.

Mr. Boyce Holleman. That election occurred in 1982, as I recall?

Mr. Ingram. That's right.

Mr. Boyce Holleman. Judge McKenzie was going out of office—Judge McKenzie was coming into office—is that right? I mean—no. The Judges' election would have been in an even year, which would have been 1982. I think I am right.

Mr. Ingram. I think you are right.

Mr. Boyce Holleman. That is right.

Mr. Ingram. I think Judge Weldy went out of office a year before Mr. Holmes went out of office.

Mr. Boyce Holleman. That is correct. The District Attorney is elected—Mr. Stewart, you see, is from Washington, Virginia, he doesn't understand our country election laws down there. The

Judges are elected in even years and not elected at the same time as the general elections where the District Attorney is elected.

Mr. INGRAM. I think that's right.

Mr. BOYCE HOLLEMAN. So Mr.—so Judge Weldy would have been defeated in 1982 and would have been going out of office in 1983.

Mr. INGRAM. He went out December 31, of 1982.

Mr. BOYCE HOLLEMAN. 1982. OK. The first of January. Whatever it is.

And this Drew Fairchild case was, of course, hanging around on the docket over there, wasn't it?

Mr. INGRAM. Correct.

Mr. BOYCE HOLLEMAN. Nobody knew what was going to happen, and nobody knew what Judge McKenzie's attitude would be. He was known as a pretty tough Judge? He was at that time? Years wise. He got elected on that platform.

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. You know how new Judges get elected, give everybody the maximum. Dickey ran on that platform.

Mr. INGRAM. He did.

Mr. BOYCE HOLLEMAN. Now then if—so it became important if this case was going to be passed to the file to get it passed before Weldy went out of office, wasn't it, if they didn't know what Dickey was going to do?

Mr. INGRAM. Assuming those facts to be correct, that is right. But you have another factor too.

Mr. BOYCE HOLLEMAN. What is that?

Mr. INGRAM. Well, I think that Judges ordinarily take the opportunity to try to present to the next Judge a clean docket and to get—to dispose of matters that have been pending on their docket for some time.

Mr. BOYCE HOLLEMAN. I am sure that was persuasive on Judge Weldy.

Mr. INGRAM. I think—knowing Judge Weldy the way I know him—and by the way, Judge Weldy is a member of my law firm now——

Mr. BOYCE HOLLEMAN. A fine lawyer.

Mr. INGRAM. He is just an incredibly fine person and fine lawyer.

Judge Weldy would be—even though he would be defeated in that election, his intellectual integrity and honesty would lend itself to handing his office over in a clean slate.

Mr. BOYCE HOLLEMAN. That is true, isn't it? Another factor, the Judge is going to do what the District Attorney recommends most of the time?

Mr. INGRAM. On matters such as that, it is strictly within the purview of the District Attorney.

Mr. BOYCE HOLLEMAN. The State is the only one that can make that motion?

Mr. INGRAM. That's right.

Mr. BOYCE HOLLEMAN. Mr. Holmes, in late 1982, before Judge Weldy went out of office, made a motion to pass the Drew Fairchild case to the files?

Mr. INGRAM. That's correct.

Mr. BOYCE HOLLEMAN. Even though Drew Fairchild had pled guilty?

Mr. **Ingram**. That's correct.

Mr. **Boyce Holleman**. After it was passed to the files, he brought you a copy of the order passing it to the file?

Mr. **Ingram**. He did.

Mr. **Boyce Holleman**. You took it and gave it to Wiley Fairchild?

Mr. **Ingram**. I did.

Mr. **Boyce Holleman**. And Wiley, of course, was happy to get it, I am sure. Came in December.

Mr. **Ingram**. He didn't express any happiness about it.

Mr. **Boyce Holleman**. All right.

Mr. **Ingram**. I mean Mr. Fairchild is not an exuberant person. I gave him the order, and certainly he was not real pleased about it, but I gave him the order.

Mr. **Boyce Holleman**. In any event, his happiness was short lived because 33 days later, Mr. Holmes brought it back to the active docket?

Mr. **Ingram**. It was put back on the active docket.

Mr. **Boyce Holleman**. And that was when, of course, Watkins, the pilot, was being looked for, brought back. I am sure Holmes was getting ready to try the case. When it came back on the docket, the publicity started all over again, didn't it?

Mr. **Ingram**. It did.

Mr. **Boyce Holleman**. It started when it passed out. It really picked up, so he put it back on the docket, isn't that true?

Mr. **Ingram**. It continued to be a matter of great publicity and notoriety after it was put back on the docket.

Mr. **Boyce Holleman**. And, of course, that caused Wiley a great deal of concern?

Mr. **Ingram**. It did.

Mr. **Boyce Holleman**. That occurred on up for the next few months, didn't it?

Mr. **Ingram**. I think so. That's right.

Mr. **Boyce Holleman**. Isn't it a fact you have never been sure, have you, Mr. Ingram, whether the farm meeting, for want of a better word, where Judge Nixon and Mr. Holmes were out at the farm, occurred in May of 1983 or of 1982, had it? March of 1983? You never have been sure about that, have you?

Mr. **Ingram**. No, I have not. I testified in my trial that I believed that the conversation took place in late 1982.

Mr. **Boyce Holleman**. Late 1982?

Mr. **Ingram**. Yes, sir. And I had attached to that significance of the matter being passed to the file. I think if you read my trial testimony, you will find that I told Mr. Richter when there was great debate about trying to pin me down on that date, that I could not be pinned down on that date. I had no reference point really to absolutely state this is the date that the telephone call was made. I don't think that knowledge ever came to me.

Mr. **Boyce Holleman**. Anyway, you can't say—you couldn't say whether Judge Nixon, when he says it occurred in March of 1983, you do know that that is consistent with the publicity being created at that particular time on the Drew Fairchild case, don't you?

Mr. INGRAM. Well, I believe that that is correct. I don't have an independent knowledge of exactly when the publicity was occurring, Mr. Holleman.

Mr. BOYCE HOLLEMAN. I see.

Mr. INGRAM. But now the publicity was in the newspaper, and it is a recorded thing. You should be able to chart that without any problem.

Mr. BOYCE HOLLEMAN. Let me show you those. We have done just exactly what you have said. We tried to look through——

Mr. INGRAM. But your point is well taken in terms of——

Mr. BOYCE HOLLEMAN. May I hand this to the witness, Mr. Chairman?

Mr. EDWARDS. Certainly.

Mr. INGRAM. Your point is well taken in terms of can I absolutely fix a date on it. The answer to that, I can't.

Mr. BOYCE HOLLEMAN. I am showing you Exhibit 20 from the committee's exhibits, number 20. Do you see those—you just have one daily paper in Hattiesburg, don't you?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. You see those news articles appearing in the first part of 1983?

Mr. INGRAM. Yes, sir, I do.

Mr. BOYCE HOLLEMAN. I don't want you to read them. You just notice there are a series of articles dealing with the Drew Fairchild case?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. That does refresh your recollection about the publicity at that time, does it not?

Mr. INGRAM. Here is an article where it is passed to the files in January, the 7th, of 1983. Then I can't read the date on this one. It says Fairchild returns to the active file. Whatever date that is.

Mr. BOYCE HOLLEMAN. Let me ask you a question about that. You do know, do you not, that Mr. Fairchild, when that publicity started back up, because of the Drew Fairchild case and passing the files to bring it out, that he got seriously agitated about that publicity on the Fairchild thing, don't you?

Mr. INGRAM. I think in one conversation he expressed that to me. I believe I testified to that.

Mr. BOYCE HOLLEMAN. And did you know that in that period of time that there was some controversy going on or had been going on that time and some time before that about attorneys' fees and so forth involved in the case?

Mr. INGRAM. Mr. Holleman, I don't know that I knew about that controversy.

Mr. BOYCE HOLLEMAN. You didn't have any dealings with that?

In any event, so far as your recollection is concerned of the publicity following that passing of the files and putting it back on the docket and Wiley's agitation after that time, when did you first learn that he was—thought you and Bud Holmes and some others were blackmailing him? When did you first learn that?

Mr. INGRAM. After the testimony in the grand jury. I mean, that's—that's preposterous.

Mr. BOYCE HOLLEMAN. That would have been—of course, it is. But you know Wiley, he gets preposterous ideas sometimes.

Mr. **Ingram**. He has very paranoid feelings a lot of times.

Mr. **Boyce Holleman**. All right.

Mr. **Ingram**. I am not a psychologist, but he's very suspicious of people and particularly lawyers.

Mr. **Boyce Holleman**. What I am asking you, as one who sat there and lived through that, that publicity, that agitation of Wiley in the early part of 1983 is consistent, is it not, so far as you are concerned, with Judge Nixon's memory that this farm incident took place in 1983?

Mr. **Ingram**. I would take no exception to that.

[4:15]

Mr. **Boyce Holleman**. You take no exception to that?

Mr. **Ingram**. I'm not saying that is consistent with my memory, but I certainly do not dispute the validity of it being consistent with Judge Nixon's.

Mr. **Boyce Holleman**. Let me ask you this question for a moment. You have known Mr. Fairchild a long time?

Mr. **Ingram**. Yes, sir.

Mr. **Boyce Holleman**. What happens if you call Mr. Fairchild up at 7 o'clock at night?

Mr. **Ingram**. A person who would know Mr. Fairchild would know not to do that.

Mr. **Boyce Holleman**. Why not?

Mr. **Ingram**. Well, because he has a habit of drinking at night.

Mr. **Boyce Holleman**. When he testified, I think it was something like six jiggers he might have drunk, I think it was.

Mr. **Ingram**. That certainly would not surprise me at all.

Mr. **Boyce Holleman**. Where is he usually by 7 o'clock in the evening?

Mr. **Ingram**. Asleep.

Mr. **Boyce Holleman**. Asleep.

And with a pretty good number of drinks under his belt?

Mr. **Ingram**. He is asleep.

Mr. **Boyce Holleman**. When you call him by that time of the night, you expect to find him there?

Mr. **Ingram**. That's right.

Mr. **Boyce Holleman**. Do you know whether or not his residence number is in the Hattiesburg telephone directory?

Mr. **Ingram**. I believe it is listed in the book.

Mr. **Boyce Holleman**. In the telephone directory. If you look it up, you can find it.

Mr. **Ingram**. Yes, sir.

Mr. **Boyce Holleman**. When Bud Holmes came to you and told you about this call that was made from the farm, the first thing he told you was he was drunk when he made it, didn't he?

Mr. **Ingram**. I believe so.

Mr. **Boyce Holleman**. All right.

Mr. **Ingram**. I am real hesitant to say that. I am not—but that would be the sense of that.

Mr. **Boyce Holleman**. So what you would have if that were true from your knowledge, if Bud said he was drunk, you know Wiley would have been drunk.

Mr. **Ingram**. Can I say something, Mr. Holleman?

Mr. **Boyce Holleman**. Yes. All right.

Mr. INGRAM. I don't want to say absolutely that Bud said that he was drunk. I think it is fair to say that he had been drinking. OK?

Mr. BOYCE HOLLEMAN. OK.

Mr. INGRAM. And I don't want to imply for one minute that Mr. Holmes is a drunk.

Mr. BOYCE HOLLEMAN. "Was" drunk or "is" drunk? I didn't understand your answer.

Mr. INGRAM. That he is a drunk.

Mr. BOYCE HOLLEMAN. No, we wouldn't want to say that.

Mr. INGRAM. OK. I am simply saying that the conversation was that he had been drinking.

Mr. BOYCE HOLLEMAN. Mr. Holmes has already testified that he had two or three drinks at his office, or I think he said you were there and had a glass of wine, but that is not correct, is it?

Mr. INGRAM. That is not correct.

Mr. BOYCE HOLLEMAN. Maybe he thought he saw you. Then you went out to the farm and I don't know whether he had had two or three drinks at the farm, I think that was his testimony.

Mr. INGRAM. But I don't know anything about that, Mr. Holleman.

Mr. BOYCE HOLLEMAN. I understand. You just know what he told you.

Mr. INGRAM. That's right.

Mr. BOYCE HOLLEMAN. But that is consistent with what he told you, that he was drunk?

Mr. INGRAM. Yes, that he was drinking. Yes, sir.

Mr. BOYCE HOLLEMAN. And decided to call Wiley?

Mr. INGRAM. That's right.

Mr. BOYCE HOLLEMAN. That is what he told you, wasn't it?

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. So what you had here then if those facts are true and what you know about Wiley, Wiley woke up and got up out of bed after drinking a lot?

Mr. INGRAM. If he was in his usual pattern, that would be correct.

Mr. BOYCE HOLLEMAN. Mr. Holmes was on the other end of the line drinking.

Mr. INGRAM. That's right.

Mr. BOYCE HOLLEMAN. That is what was said.

Mr. INGRAM. Right.

Mr. BOYCE HOLLEMAN. You wouldn't consider that very much of an intelligent discussion would come out of such a meeting like that, would you?

Mr. INGRAM. Mr. Holleman, I didn't make a judgment about the discussion.

Mr. BOYCE HOLLEMAN. Let me ask you about one you did make.

Mr. INGRAM. OK.

Mr. BOYCE HOLLEMAN. Because Judge Nixon, as you know, was convicted of denying that he discussed the Fairchild case. You are familiar with the count?

Mr. INGRAM. Yes, I am familiar with that.

Mr. BOYCE HOLLEMAN. On page 1069 of your testimony, you were asked this question: "Did Judge Nixon ever discuss with you his involvement of the Drew Fairchild case?"

Your answer: "Judge Nixon did not discuss with me because I will qualify the term 'discuss.' Judge Nixon did indicate to me that he talked to Mr. Holmes about Drew Fairchild's case and that he had told me this."

You didn't regard this as a discussion.

Mr. INGRAM. It absolutely wasn't a discussion. There was not any question about it. It was not a discussion. Judge Nixon passed along to me in an implied or understated manner that information, and there was no discussion about it, and if you took it at the moment that the telephone call was over with, I could not have affirmatively and positively told you the significance or the content of that telephone conversation.

Mr. BOYCE HOLLEMAN. At the time you gave this answer, when you gave this and you were at the trial testifying.

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. And you were testifying in a trial where the judge, Judge Nixon is being tried for giving his answer to the question, "Did you discuss the Drew Fairchild case with anybody," and he said, "no." So you know the importance of the word "discuss," don't you, at the time you were testifying?

Mr. INGRAM. No question about it. I know the importance of the word "discuss" as it relates to just what you have there, what you read to me.

Mr. BOYCE HOLLEMAN. So you still didn't consider it a discussion?

Mr. INGRAM. There was no discussion.

Mr. BOYCE HOLLEMAN. OK.

Now, of course, if I asked you as a lawyer if you discussed a case with me, that has a different connotation than it might have to someone else, right?

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. I might see you and ask you if you represented John Jones in the Forest County Circuit Court in a murder case, and you say, "Yes, tried it five days," and we pass on to another subject. If somebody asked you about that four years from now, would you consider that we had discussed the case?

Mr. INGRAM. You and I didn't have a discussion about that case at all.

Mr. BOYCE HOLLEMAN. All right.

So you were aware, of course, at the time when you gave this answer sitting in the courtroom where Judge Nixon was being tried, and said no, you did not have a discussion, you knew that was what his case was about, didn't you?

Mr. INGRAM. In the trial?

Mr. BOYCE HOLLEMAN. Yes, that was one of the counts.

Mr. INGRAM. Certainly, yes.

Mr. BOYCE HOLLEMAN. I am not going to go back over these notes because they have been amplified by counsel. You have answered them truthfully.

You say they have no relation to the Drew Fairchild matter.

Mr. INGRAM. They have no relation whatsoever.

Mr. BOYCE HOLLEMAN. You say that Judge Nixon did call you at home and he was disturbed about the interview?

Mr. INGRAM. Sure.

Mr. BOYCE HOLLEMAN. You and Judge Nixon have been friends, are you not?

Mr. INGRAM. We have and are, so far as I know.

Mr. BOYCE HOLLEMAN. I didn't mean to cut it off. He needs friends now worse than ever, so I won't cut it off.

Mr. INGRAM. I have not cut off my friendship to Judge Nixon. I have not had the contact with Judge Nixon that I have had in the past.

Mr. BOYCE HOLLEMAN. I understand.

Mr. INGRAM. But I didn't feel that I could have it under the circumstances.

Mr. BOYCE HOLLEMAN. The point is——

Mr. INGRAM. Mainly because that is what I wanted.

Mr. BOYCE HOLLEMAN. You are not close to him but he has been in your home and you have been in his?

Mr. INGRAM. I have been in his home one time and he has been in my home a couple of times.

Mr. BOYCE HOLLEMAN. All right. So he knew you were a highly respected member of the bar?

Mr. INGRAM. I believe Judge Nixon had respect for me and I believe he has respect for me today.

Mr. BOYCE HOLLEMAN. And let me ask you a question about that. You have been in Judge Nixon's court since he was a judge. What do you think he would have done if Wiley Fairchild had come up on the docket in the Federal United States District Court of Southern Mississippi with an oil case and a party to the case? What would he have done?

Mr. INGRAM. He would have recused himself.

Mr. BOYCE HOLLEMAN. He would have done that in a minute, wouldn't he?

Mr. INGRAM. Right.

Mr. BOYCE HOLLEMAN. You know him well enough to know that.

Mr. INGRAM. There is not any question about that.

Mr. BOYCE HOLLEMAN. Now, you were not upset or you were not surprised when Judge Nixon, in this moment of anguish, when somebody walked into his office and started accusing him of doing something wrong—just as they did you later on—you were not surprised that he called you about it, were you?

Mr. INGRAM. Not at all.

Mr. BOYCE HOLLEMAN. And he was upset about it?

Mr. INGRAM. I think he had a right to be.

Mr. BOYCE HOLLEMAN. He was upset just like you were?

Mr. INGRAM. I suspect if I had been in his position, I would have been upset.

Mr. BOYCE HOLLEMAN. You were upset later on when you were placed in that position, weren't you?

Mr. INGRAM. I was really upset the night he called me because I didn't know what the developments were either.

Mr. BOYCE HOLLEMAN. And he wanted to know what was going on?

Mr. INGRAM. He did.

Mr. BOYCE HOLLEMAN. And if you knew anything about it?

Mr. INGRAM. That's correct.

Mr. BOYCE HOLLEMAN. And he told you that the telephone might even be wired or tapped, didn't he?

Mr. INGRAM. He did.

Mr. BOYCE HOLLEMAN. All right. But he still wanted to say what he wanted to say?

Mr. INGRAM. I don't think that he was saying that as a fact. I just think he was saying, "Even if the telephone is being recorded, that I'm still saying these things to you."

Mr. BOYCE HOLLEMAN. Now, subsequent to that when Bud Holmes came to talk to you after this matter got under way pretty well, and he—let me take that back. Strike that.

When you were in Washington, the news of your being in Washington to confer with the prosecutors got out in Hattiesburg quite by accident?

Mr. INGRAM. It was on the television.

Mr. BOYCE HOLLEMAN. I know, but it got out by accident, didn't it?

Mr. INGRAM. I am assuming it did.

Mr. BOYCE HOLLEMAN. As a matter of fact, didn't you call somebody, a former secretary who used to work for you, to ask her a question?

Mr. INGRAM. Mr. Blass called my secretary and so—and he called some other people, too, so that word, I am assuming, filtered out through some of those contacts that we made when we were here.

Mr. BOYCE HOLLEMAN. Turned out you didn't know your former secretary had married one of the newscasters for the local TV station, did you?

Mr. INGRAM. I didn't know that. I don't know for a fact that that is how——

Mr. BOYCE HOLLEMAN. I understand.

Mr. INGRAM. —how it got out. I am not accusing her of doing that.

Mr. BOYCE HOLLEMAN. I understand that, but it is highly suspicious that it wound up on channel 7 immediately that you were in Washington making a deal with prosecutors?

Mr. INGRAM. It certainly is very coincidental but I'm not accusing anybody of doing anything.

Mr. BOYCE HOLLEMAN. Neither do I. I do not accuse anyone. I am just pointing out the coincidence.

When you got back, of course, there was quite a bit of excitement about that?

Mr. INGRAM. Well, it had been on the news.

Mr. BOYCE HOLLEMAN. Yes.

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. Now then, Mr. Holmes came to see you.

Mr. INGRAM. He did.

Mr. BOYCE HOLLEMAN. And, of course, he was worried about what you had said?

Mr. INGRAM. That is correct.

Mr. BOYCE HOLLEMAN. And he was real worried because he was getting ready to go back in front of the grand jury, wasn't he, about two or three days after that?

Mr. INGRAM. I think so, yes.

Mr. BOYCE HOLLEMAN. In February.

Mr. INGRAM. I think so.

Mr. BOYCE HOLLEMAN. And he was concerned about what you told him about the phone all?

Mr. INGRAM. Yes, sir.

Mr. BOYCE HOLLEMAN. But you didn't really attach much significance to it, still don't, do you?

Mr. INGRAM. I really did not understand at that time why that was so important.

Mr. BOYCE HOLLEMAN. Anyway, Mr. Holmes was concerned about it.

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. And he was concerned about it because he was about to go back in front of the grand jury?

Mr. INGRAM. I think that is accurate.

Mr. BOYCE HOLLEMAN. You told him that you had told about it and told Mr. Weingarten about it and what you knew about it, and related the conversation that was had with Mr. Holmes about the call.

Mr. INGRAM. That is correct.

Mr. BOYCE HOLLEMAN. And he was a little disappointed.

Mr. INGRAM. He was, yes.

Mr. BOYCE HOLLEMAN. And upset about it.

Mr. INGRAM. He was.

Mr. BOYCE HOLLEMAN. One comment, please, Mr. Chairman.

On the question—just one or two more questions, Mr. Chairman—on the question of the loan, that is the designing of the notes where Judge Nixon financed the purchase of these oil properties, he had told you he intended to finance them.

Mr. INGRAM. That's right.

Mr. BOYCE HOLLEMAN. And Mr. Fairchild said, "I'll handle the paper myself"?

Mr. INGRAM. Yes.

Mr. BOYCE HOLLEMAN. Was there anything unusual about that?

Mr. INGRAM. Not the first thing.

Mr. BOYCE HOLLEMAN. Didn't Wiley sort—you told me he sort of served as the bank for Forest County for years.

Mr. INGRAM. For a long time he has loaned a lot of people a lot of money.

Mr. BOYCE HOLLEMAN. Including you.

Mr. INGRAM. Including me.

Mr. BOYCE HOLLEMAN. And when he——

Mr. INGRAM. Not a lot of money to me, but some money, and at a time that it was very crucial to my career and my life and until this day I am grateful for it.

Mr. BOYCE HOLLEMAN. Absolutely.

And you said Wiley is one of the old school; when you give your word, that is a bond, isn't it?

Mr. INGRAM. I didn't say that. I said that he has a very strong principle that if you owe him money, he is going to collect it.

Mr. BOYCE HOLLEMAN. That is what I was referring to. If you say I am going to pay you something back, you pay it back.

Mr. INGRAM. That's right.

Mr. BOYCE HOLLEMAN. All right.

And so when he took these notes and charged 10 percent interest, he fixed the interest?

Mr. **Ingram**. Yes.

Mr. **Boyce Holleman**. And you wouldn't be worried about a note from a Federal judge or a State judge or certainly not Mr. Holmes, would you?

Mr. **Ingram**. No.

Mr. **Boyce Holleman**. Without security?

Mr. **Ingram**. No problem.

Mr. **Boyce Holleman**. And that might include myself of that, but I might be afraid of your answer so I won't include myself.

Mr. **Ingram**. I started to——

Mr. **Boyce Holleman**. To qualify the list?

Mr. **Ingram**. To qualify that, but, no.

Mr. **Boyce Holleman**. My point is, this was not an unusual thing for Wiley Fairchild to do?

Mr. **Ingram**. It really is not but that may sound unusual to somebody who doesn't know the circumstances, but that just is not an unusual situation as far as Mr. Fairchild is concerned.

Mr. **Boyce Holleman**. And I believe you said that Mr. Fairchild might donate $100,000 to the University of Southern Mississippi or the Girl Scouts tomorrow, but if you owned him $100,000 and it was due on a certain date, he would collect it.

Mr. **Ingram**. You bet.

Mr. **Boyce Holleman**. If he——

Mr. **Ingram**. And I will even go a step further. You may well be running for district attorney and he may give you as a campaign contribution $5,000 for your campaign, for which he does not expect to be repaid the $5,000, but at the same time, if you have borrowed $1,000 from him, then he will collect the $1,000 from you.

Mr. **Boyce Holleman**. That is just the principle by which he lived.

Mr. **Ingram**. That is correct.

Mr. **Boyce Holleman**. So the notes, with Judge Nixon paying the notes and paying 10 percent interest didn't bother him in the slightest?

Mr. **Ingram**. That's right.

Mr. **Boyce Holleman**. He would rather pick up the 10 percent on the face of it?

Mr. **Ingram**. It isn't a matter of picking up the 10 percent; it is a matter that he financed it and he genuinely expected Judge Nixon to pay the debt back, and if Judge Nixon had not paid the debt back, Mr. Fairchild would have collected the debt.

Mr. **Boyce Holleman**. Mr. Ingram, what has been your assessment as a practicing lawyer for 21 years in the Southern District of Mississippi of Judge Walter Nixon as a judge?

Mr. **Ingram**. I think he has been an excellent judge.

Mr. **Boyce Holleman**. Have you tried cases in his court?

Mr. **Ingram**. I sure have.

Mr. **Boyce Holleman**. Did you ever see him give favoritism to either side?

Mr. **Ingram**. I have not. I think I testified in my transcript of my trial earlier that I think if you look at my record, I batted about

50/50 in Judge Nixon's court, and I think I deserve better than 50/50, but he called it like he saw it and I think he was a good judge.

Mr. BOYCE HOLLEMAN. If you were a judge on the bench, and you have served under a lot of judges, do you know any judge on the bench who was more widely respected or was more widely respected on the bench by the prosecution, and the defense, by the plaintiff's lawyers and the defense lawyer than Judge Walter Nixon?

Mr. INGRAM. Judge Nixon was well respected on the bench.

Mr. BOYCE HOLLEMAN. Have you ever heard anybody criticize him for leaning one way or the other in a case?

Mr. INGRAM. Well, Mr. Holleman, you know if you win a case, the judge is right.

Mr. BOYCE HOLLEMAN. I mean——

Mr. INGRAM. If you lose a case, the judge is wrong.

Mr. BOYCE HOLLEMAN. I understand.

Mr. INGRAM. So from time to time you may have heard criticism one way or the other about that, but Judge Nixon has had a fine reputation as a judge and——

Mr. BOYCE HOLLEMAN. Let me qualify that. I should have qualified that statement. You are absolutely correct: Nobody likes a judge right away after they decide something against him.

Mr. INGRAM. Right.

Mr. BOYCE HOLLEMAN. I don't.

Mr. INGRAM. I don't either.

Mr. BOYCE HOLLEMAN. What I am saying is, do you know of any instance where that criticism was justified by the actions Judge Nixon took as a judge?

Mr. INGRAM. Not to my knowledge.

Mr. BOYCE HOLLEMAN. No further questions.

Mr. EDWARDS. Thank you, Mr. Holleman.

I don't believe we have any more questions. Excuse me, Ms. Naughton.

You will have another turn, Mr. Holleman.

Counsel has some questions. Ms. Naughton.

Ms. NAUGHTON. Thank you, Mr. Chairman.

I just have two very brief questions, Mr. Ingram, to straighten out a couple things.

I call your attention to page 1068 where Mr. Holleman asked you questions regarding the date, whether it would be 1982 or 1983, concerning the phone call to the farm and so forth. You recall that part of the testimony?

Mr. INGRAM. Yes.

Ms. NAUGHTON. I want to read this testimony to you that you testified to at Judge Nixon's trial and ask you if that comports with your present recollection.

"Question: Did it ever come to your attention that Wiley Fairchild and Judge Nixon had contact about Drew Fairchild's case?

"Answer: Yes, it did. Sometime in late fall of 1982, Mr. Fairchild told me that he had asked Judge Nixon to talk to Mr. Holmes about Drew Fairchild's case."

Does that comport with your present recollection?

Mr. INGRAM. It does. As I said, I had attached the significance of the passing, in retrospect or hindsight, the passing of the case to the files in late 1982 to that. I believed that that was it, but there was not a way for me to independently say absolutely that that is the date.

Ms. NAUGHTON. So your testimony at the time of the trial was your best recollection as you knew it to be?

Mr. INGRAM. There is no question about that, yes.

Ms. NAUGHTON. Now, again I want to ask you, Mr. Holleman went through this on page 1069, that is when you were asked, "Did Judge Nixon ever discuss with you his involvement," and I believe it is in the Drew Fairchild case.

Now, he read you this part but he didn't read you the whole answer. The answer is, "Judge Nixon did not discuss with me, because I'll qualify the term 'discuss,' but Judge Nixon did indicate to me that he had talked with Mr. Holmes about Drew Fairchild's case and that he had, he told me that." Then the question is, "Did he indicate to you why he had spoken to Bud Holmes about Drew Fairchild's case?

"Answer: Because Mr. Fairchild had asked him to."

You go on to describe the conversation.

Mr. INGRAM. Yes.

Ms. NAUGHTON. Does that comport with your present recollection?

Mr. INGRAM. Sure.

Ms. NAUGHTON. So when you were asked whether or not Judge Nixon ever discussed his involvement in Drew Fairchild's case, you said he did not discuss the case with you?

Mr. INGRAM. That is correct.

Ms. NAUGHTON. But then you went on to add that he did indicate he had talked with Bud Holmes, correct?

Mr. INGRAM. And I am making a distinction. I don't consider that to have been a discussion with me about those facts.

Ms. NAUGHTON. I understand. My point is that when asked the question, when you were asked the question at trial, "Did he discuss with you," you said he did not discuss it.

Mr. INGRAM. I answered "no."

Ms. NAUGHTON. But he did indicate he had talked with Bud Holmes and you described exactly what happened.

Mr. INGRAM. That is correct.

Ms. NAUGHTON. When you were doing that, you were telling the truth, the whole truth and nothing but the truth?

Mr. INGRAM. I was telling the truth, the best I knew it.

Ms. NAUGHTON. Thank you very much. No further questions.

Mr. INGRAM. I don't view that as being inconsistent with what I have said to Mr. Holleman. I really don't.

Ms. NAUGHTON. I understand. My point was, your answer was a complete answer and you told everything you knew, correct?

Mr. INGRAM. That is correct.

Mr. BOYCE HOLLEMAN. And if Mr. Weingarten and the grand jury had followed his question, "Did you ever discuss the Drew Fairchild case with Bud Holmes," and Judge Nixon said, "No, not to my recollection," I think you would recall it. If he had followed that with a question, "Are you saying you never talked to Bud Holmes," then we would know the answer to that, wouldn't we, Mr. Ingram?

Mr. **Ingram**. I certainly think you could know the answer to that.

Mr. **Boyce Holleman**. You chose to stand on "discuss." You chose to stand on that.

Mr. **Ingram**. You are going into something I am not totally familiar with.

Mr. **Boyce Holleman**. I understand. But you added "talk" to your answer. You denied the discussion but you had a talk.

Mr. **Ingram**. That's right.

Mr. **Boyce Holleman**. Let me ask you this question. On page 1150 of your testimony, you were asked this about this statement. Mr. Holmes fixes the date in May, 1982. I think Judge Nixon fixes it in March of 1983, and you fix it in along about in the middle.

Mr. **Ingram**. I fix it late 1982.

Mr. **Boyce Holleman**. On page 1150 the question is asked, "Is it fair to say you have, that as you sit there now, it could well have happened within two months on either side of it, three, four months on either side of it, and there would be nothing that would really disturb you if it was established to have occurred three months later than that?"

Your answer: "In the absence of my being able to say that I knew the phone call happened on this date, and I told you I have no independent way of establishing when the phone call took place, I give you what my belief is and what my sense of feeling is."

Mr. **Ingram**. That's right.

Mr. **Boyce Holleman**. That came from the fact about the passing to the files.

Mr. **Ingram**. That's right.

Mr. **Boyce Holleman**. You look at this publicity and you are not sure that feeling is correct, are you, Mr. Ingram?

Mr. **Ingram**. I don't think that I have to make that judgment about my feeling being correct or not being correct. I think I have fairly said that my sense was that it was in late 1982. I don't think that—I don't think I need to make a judgment that that is incorrect.

I have said that if—that it very well could have been another day and I wouldn't be offended by that.

Mr. **Boyce Holleman**. Could have been four months, three or four months later.

Mr. **Ingram**. It absolutely could have been. I am not saying that date is an absolute certainty. I didn't in my trial and I don't here today.

Mr. **Boyce Holleman**. I understand. You did say one thing—and this is my last question, I promise, faithfully, Mr. Chairman—you said that it wasn't exactly clear what you said about Judge Nixon did not say to you that he put in a good word. That was not his language. That is your language?

Mr. **Ingram**. No, that is kind of an assessment or a judgment. I didn't say Judge Nixon said that. If I did, I did not mean that to be a quote.

Mr. **Boyce Holleman**. A quote, right. You are just saying that——

Mr. **Ingram**. I couldn't quote to you the telephone call for anything, and if I told you I could quote the telephone call, I don't think you would have a lot of confidence in the quote because I don't believe I could remember.

Mr **Boyce Holleman**. I would hope not.

Mr. **Ingram**. Sir?

Mr. **Boyce Holleman**. I would hope not after all this time.

Mr. **Ingram**. OK, sir.

Mr. **Boyce Holleman**. Thank you, Mr. Chairman.

Mr. **Edwards**. Thank you very much.

Mr. Ingram, you have been a forthright, very helpful witness. As you leave, do you have any personal observations about this case you would like to tell the subcommittee?

All of this is new to us, too, you know. We have not been involved in very many of these types of investigations or inquiries. As a matter of fact, Mr. Conyers and I and Mr. Kastenmeier have probably, among us, been involved in more than any Members of Congress in the 200 years the Republic has existed, so we need assistance.

Do you have any observations about this case?

Mr. **Ingram**. Mr. Chairman, I do not have any observations about the case. I think I have pretty well stated my observations in my testimony and I think I have covered everything that I could think about of being of any significance to the committee. I think that you have gotten a sense of where I am, and I hope a sense of who I am and a sense of my desire to say to this committee wholly and truthfully everything I know about this case. And I think a lot of the terms in this case have been very unfortunate and I think I have expressed that.

I am pleased and delighted to see you and this committee go to great lengths to be fair and impartial in the hearing of this case, and for you to make the judgments about it. I am a fact witness in the case and I don't know that my judgment about the ultimate issues in the case would be not colored by my own emotions and my own sense of the case. So I have complete confidence in you as the Chairman of this committee and the committee to determine those ultimate issues.

I am pleased, even though I did not desire to come. You know, it is not pleasant to come to testify in a setting such as this. I am pleased to see that the committee is going to the length of rendering a fair and complete hearing. I have seen evidence of that today here. I have been grilled by all sides and questioned fairly, and if I knew of something else that I thought would help the committee, then I certainly would be willing to present that to the committee.

I don't desire to come back, but if it is necessary for me to submit additional information to the committee, I will, and willingly do that because I truly want to see the right, the appropriate decision to come from this committee. I want to be an appropriate and proper part of that process, and I feel strongly about that.

Mr. **Edwards**. You have been and you are, and we appreciate it, Mr. Ingram.

If there are no further questions of this very helpful witness, we will reconvene at 11:00 a.m. Tuesday next.

Mr. **Stewart**. Mr. Chairman, I just had a procedural question which I had presented to staff at the break, and I hoped for a response. We have requested that when Judge Nixon testifies on

Tuesday, as is scheduled, that he be permitted first to testify in response to questions by his own counsel. Just that that would be a more efficacious way to proceed.

Mr. **Edwards**. I have heard that before, but let me take just a moment.

We have unanimously agreed that that is OK.

Mr. **Stewart**. Thank you, Mr. Chairman.

Mr. **Edwards**. We are in recess until next Tuesday at 11:00 a.m.

[Whereupon, at 4:45 p.m., the subcommittee adjourned, to reconvene at 11:00 a.m., on Tuesday, July 12, 1988.].

JUDGE WALTER L. NIXON JR., IMPEACHMENT INQUIRY

TUESDAY, JULY 12, 1988

House of Representatives,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:05 a.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Conyers, Schumer, Sensenbrenner, DeWine, and Dannemeyer.

Staff present: Alan I. Baron, chief special counsel; Catherine LeRoy, counsel; Pamela J. Naughton, assistant special counsel; Peter E. Keith, assistant special counsel; D. Christopher Ohly, assistant special counsel; and Alan Slobodin, associate counsel.

Mr. Edwards. The subcommittee will come to order.

This morning, we are going to hear from Judge Nixon, and our plans for this morning are that the subcommittee will meet until about 10 minutes to 1:00. We will break for lunch at that time. I have to testify at 1:00 o'clock in another committee and will be back promptly in the event Judge Nixon is not finished—and I presume he will not be—by 2:00. We will start promptly at 2:00 and go on until testimony has been completed.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Mr. Chairman, I ask unanimous consent that this subcommittee hearing may be broadcast pursuant to committee Rule 5.

Mr. Edwards. Without objection, it is so ordered.

Judge Nixon, good morning.

Judge Nixon. Good morning, Mr. Chairman.

[Witness sworn.]

Mr. Edwards. I believe that Mr. Stewart will do the direct examination of the Judge. Is that correct, Mr. Stewart?

Mr. Stewart. Yes, Mr. Chairman.

Mr. Edwards. You may proceed. After you have completed your examination, our subcommittee associate staff special counsel, Pam Naughton, will ask the Judge questions, and the members, of course.

You may proceed.

Mr. Stewart. Thank you, Mr. Chairman.

TESTIMONY OF WALTER L. NIXON, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Mr. **STEWART**. Good morning, Judge Nixon.

Judge **NIXON**. Good morning, Mr. Stewart.

Mr. **STEWART**. Could you give your full name, please?

Judge **NIXON**. Walter L. Nixon, Jr.

Mr. **STEWART**. And what is your age?

Judge **NIXON**. Fifty-nine.

Mr. **STEWART**. Where were you born and where did you grow up?

Judge **NIXON**. I was born in Biloxi, Mississippi, and grew up there.

Mr. **STEWART**. And while you were growing up, was your family involved in public service or in local government?

Judge **NIXON**. Yes.

Mr. **STEWART**. Could you describe that just briefly?

Judge **NIXON**. My father served on the county governing body for 16 years, from 1923 through 1939.

Mr. **STEWART**. And was that an elected position?

Judge **NIXON**. Yes, it was. Elected every four years.

Mr. **STEWART**. What secondary schools did you attend?

Judge **NIXON**. I attended and graduated from Notre Dame High School in Biloxi. I attended Marion Military Institute my first year of college in Marion, Alabama; my second year of college I attended Louisiana State University, LSU, in Baton Rouge; and I then attended and completed Tulane University Law School in New Orleans, Louisiana, graduating in 1951.

Mr. **STEWART**. Following your graduation from law school, did you sit for the bar exam?

Judge **NIXON**. I took the Louisiana bar exam and passed and was admitted, and then went back home and took the next available Mississippi exam in 1952 and passed it and was admitted to practice in Mississippi also.

Mr. **STEWART**. Did there come a time when you began serving in the Armed Forces?

Judge **NIXON**. Yes. I was called to active duty in February of 1953. I had attended ROTC in college and had been commissioned a second lieutenant. And I was called to duty during the Korean Conflict and served from 1953 until 1955, February of 1955, two years.

Mr. **STEWART**. In which branch of the service did you serve?

Judge **NIXON**. United States Air Force.

Mr. **STEWART**. And what was your rank when you were discharged?

Judge **NIXON**. It was captain; I later became a major in the Reserves, and I am in the retired Reserve of the Air Force at this time as a major.

Mr. **STEWART**. Now, after you were discharged from the Air Force, where did you take up residence?

Judge **NIXON**. In Biloxi.

Mr. **STEWART**. And did you resume the practice of law?

Judge **NIXON**. Yes, I did.

Mr. **STEWART**. What kind of practice did you develop at that point?

Judge NIXON. General civil practice. Very little criminal practice.

Mr. STEWART. Could you describe the nature of your clients? Were they individuals or businesses?

Judge NIXON. Yes, individuals primarily. I represented primarily plaintiffs and taught litigation and also admiralty cases.

Mr. STEWART. Now, were you active during this time period in local government or in bar activities?

Judge NIXON. Well, I was president of the Biloxi Chamber of Commerce after serving on the Board of Directors, and I was second president of what is now the Mississippi Trial Lawyers Association, elected president.

Mr. STEWART. OK. In what geographic area did you practice law?

Judge NIXON. Primarily in the southern half of Mississippi; more on the coast than any other area. I lived on the coast.

Mr. STEWART. By that, you mean the Biloxi, Gulfport area?

Judge NIXON. Correct. Biloxi, Gulfport, Pascagoula area.

Mr. STEWART. Now, was your practice successful as it went on?

Judge NIXON. Yes.

Mr. STEWART. When were you appointed to the Federal bench?

Judge NIXON. I was appointed in June of 1968 and took the oath on July 26, 1968, two weeks from this date 20 years ago.

Mr. STEWART. And for the year before you took the bench, what approximately was your net revenue from your law practice?

Judge NIXON. My taxable income was approximately $220,000.

Mr. STEWART. Now, who appointed you to the Federal bench?

Judge NIXON. President Lyndon Johnson.

Mr. STEWART. And how old were you at that time?

Judge NIXON. Thirty-nine.

Mr. STEWART. What was the salary of a Federal judge then?

Judge NIXON. As I recall, it was approximately $42,500, somewhere in that neighborhood, I think.

Mr. STEWART. Why did you accept that appointment?

Judge NIXON. Because it is something to which most lawyers aspire. It is the epitome, in my judgment, of the legal profession, and I wanted to serve as a United States District judge. I admired our Judge Sternan who had served from 1937. We had one district judge, and he had served most of that time, since 1937.

Mr. STEWART. Could you describe just briefly during the time you were on the bench, or have been on the bench the types of cases that predominate in the Southern District of Mississippi?

Judge NIXON. Well, admiralty cases, various type cases. Usually most of the type cases you would find anywhere in the United States District Court: admiralty cases, commercial, litigation, criminal cases, including some very high profile criminal cases, and civil cases.

Mr. STEWART. Now, how heavy was your caseload in the Southern District?

Judge NIXON. When I went on the bench in 1968—and that was the third position created at that time for the district; we had had two before that time—our caseload was approximately 700 or 800 total civil cases at that time.

Mr. STEWART. Did that come to change over time?

Judge NIXON. Yes. Not too long after that, it grew to over 4,000. We were always first or second, usually first, second or third in the Nation in case filings per judge. In weighted caseload, which meant complex cases, we were first, second or third in the Nation. And in disposal rate, we ranked in the top five in the Nation.

Mr. STEWART. Now, while you have served as a district judge, have you also served in various administrative positions or supervisory positions within the judiciary?

Judge NIXON. Yes. I am past president of the Fifth Circuit District Judges Association, having been elected before the split of the circuits to the Fifth and Eleventh, and serving at that time of the split. And also I served on the Fifth Circuit Judicial Council and was so serving when this matter came up.

Mr. STEWART. Now, where are your chambers located?

Judge NIXON. The base of my headquarters, so to speak, was in Biloxi, and I had chambers in Jackson, and we shared chambers in—well, at that time we shared chambers in Jackson also, and Meridian, Vicksburg, and Hattiesburg.

Mr. STEWART. Maybe you can describe how your docket worked. You have referred to the fact that you have had to go hold court in all these different cities.

Judge NIXON. At the time that I went on the bench, we had an arrangement which was not, I think, conducive to economy and efficiency. The three of us shared cases equally in each division of the entire district, which meant a great deal of travel and a great deal of, I think, wasted time.

That changed later after I became chief judge. We were assigned primarily, at least, and specifically in certain instance, various divisions over which we were responsible, either singularly or jointly.

Mr. STEWART. All right. And which were the various cities that you have convened court in within the district?

Judge NIXON. I did not understand the question.

Mr. STEWART. Which were the cities in which you did convene court?

Judge NIXON. Biloxi, Hattiesburg, Jackson, Vicksburg, Meridian, and we usually sat in Natchez at the State facility which was made available to us about once a year. We are talking about a geographical distance from Biloxi to Vicksburg, which was the farthest point, of approximately 210 miles. We had 45 of 82 counties in our district.

Mr. STEWART. You mean of the 82 counties in Mississippi?

Judge NIXON. In Mississippi.

Mr. STEWART. How would you describe the general relationship between the Bar and the Federal bench in the Southern District of Mississippi?

Judge NIXON. Very good relationship, a warm relationship, a close relationship, that you have to live there to experience.

Mr. STEWART. Would you characterize it as a formal relationship, a distant one, or an informal relationship?

Judge NIXON. Very informal.

Mr. STEWART. Can you provide some examples as to how that informality would characterize your dealings with counsel when you ere not on the bench?

Judge NIXON. Yes. It was not unusual for the judge and counsel in the case to have lunch together while the case was going on or dinner together. Counsel for both sides would usually come in and ask the judge to go to lunch. This was all of our judges, of course, and we frequently did that. It was a very informal, very friendly basis, which, of course had no influence in the courtroom. Once in the courtroom, of course, it was a different situation.

Everyone understood that and respected it.

Mr. STEWART. And I believe you said this was not unique to you; this is how all the judges in the district operated?

Judge NIXON. That is correct.

Mr. STEWART. Have you ever been considered for appointment to the appellate bench?

Judge NIXON. Yes. I was offered the Fifth Circuit judgeship.

Mr. STEWART. When was that?

Judge NIXON. In 1982.

Mr. STEWART. And what was your decision about that?

Judge NIXON. After talking with Barbara, my wife, about it quite a bit and praying over it, I decided to decline it.

Mr. STEWART. And what was your reason?

Judge NIXON. I was a trial lawyer, I was a trial judge. I liked the courtroom and the atmosphere of the trial. And that was a big primary reason.

Mr. STEWART. Now, at the time of your indictment in this matter, which was August of 1985, did you voluntarily suspend hearing new cases?

Judge NIXON. Yes, I did.

Mr. STEWART. You have referred to your wife here. You are married?

Judge NIXON. Yes.

Mr. STEWART. For how long have you been married?

Judge NIXON. We have been married 12 years.

Mr. STEWART. Now, do you have any children?

Judge NIXON. Yes, I have seven all together. Two by my previous marriage and——

Mr. STEWART. How old are they now?

Judge NIXON. Thirty-eight and 34 years of age. They have three children. My son has one and my daughter has two. I have three grandchildren there from them.

Mr. STEWART. And your other children are how old?

Judge NIXON. The other children, their ages range from 11 to 24.

Mr. STEWART. And the older children in this second group come from Mrs. Nixon's first marriage; is that correct?

Judge NIXON. Yes.

Mr. STEWART. And how long have they all been living with you?

Judge NIXON. Since we have been married. I do not distinguish between them and our daughter, Courtney, or my children from the first marriage, and neither does Barbara.

Mr. STEWART. Judge Nixon, I need to switch now to ask you more about matters that bring us here today. Do you know a man named Carroll Ingram who testified here on Friday?

Judge NIXON. Yes, I do.

Mr. STEWART. How long have you known Mr. Ingram?

Judge NIXON. I have known Carroll since approximately the time I went on the bench, maybe a little before, maybe a little after.

Mr. STEWART. Has he been a friend of yours?

Judge NIXON. Yes.

Mr. STEWART. Have you seen Mr. Ingram socially?

Judge NIXON. Yes. He and his wife visited with us in our home, and we visited in his home. He and I have eaten lunch and dinner together quite a bit. Each year he would give a vegetable dinner at his home and invite some of his closest friends, and we were invited several times.

Mr. STEWART. Is he an able lawyer?

Judge NIXON. Yes, he is. Very able.

Mr. STEWART. Mr. Ingram is from Hattiesburg, is he not?

Judge NIXON. Well, he lives in Hattiesburg and practices there. I understand that originally he is from Covington County, just a little north of Hattiesburg.

Mr. STEWART. And do you know another lawyer from Hattiesburg named "Bud" Holmes?

Judge NIXON. Yes.

Mr. STEWART. How long have you known Mr. Holmes?

Judge NIXON. I think since around 1960, roughly.

Mr. STEWART. Has he been a friend of yours?

Judge NIXON. Yes.

Mr. STEWART. Have you seen him socially?

Judge NIXON. Yes.

Mr. STEWART. Have you seen either Mr. Ingram or Mr. Holmes socially since 1985?

Judge NIXON. No.

Mr. STEWART. Do you know a man named Wiley Fairchild?

Judge NIXON. Yes.

Mr. STEWART. How did you come to meet Mr. Fairchild?

Judge NIXON. I may have met Mr. Fairchild briefly and formally somewhere before this time, but I came to know him in 1980.

Mr. STEWART. How did that come to pass? How did you come to meet Mr. Fairchild?

Judge NIXON. Well, Carroll Ingram introduced us in 1980.

Mr. STEWART. All right. Now, had you discussed with Mr. Ingram before then possibly meeting Mr. Fairchild?

Judge NIXON. Yes.

Mr. STEWART. Why don't you describe how that arose?

Judge NIXON. All right. In the very first part of 1979—and I am recalling these dates as best I can, and they are rough estimates based upon a lot of reconstruction that has been done. In February of 1979, as I recall, I was in Jackson holding court, and Carroll Ingram was up there in connection with his legislative duties. I think he was at that time chairman of the Senate Judiciary Committee in the State legislature. We had dinner one night, and Carroll and I were talking about children and family and income and investments and cost of education and what have you. And I mentioned to Carroll that my children would be coming of college age in the near future, and that I was hoping to make some investments to supplement my income in order to be sure that I could educate my children.

Mr. STEWART. Do you recall what your judicial salary was at that time?

Judge NIXON. I think it was approximately $54,000.

Mr. STEWART. All right. Please continue. Did Mr. Ingram make any response?

Judge NIXON. Yes. I had talked to Mr. Ingram, or Carroll—I called him that—about possible investments, real estate, and I knew he was in the banking or savings and loan business. I mentioned those, and I mentioned about a colleague of mine who had invested with a mutual friend in oil and gas. And when I mentioned oil and gas is when Carroll mentioned the name Wiley Fairchild. He said he had a client who was in the oil and gas business.

Mr. STEWART. Now, did you know Mr. Fairchild's name?

Judge NIXON. Yes, I knew it, but I did not know it in connection with the oil and gas industry. I knew it in connection with his contracting business, W. R. Fairchild Construction Company; primarily I think bridge and highway construction.

Mr. STEWART. All right. Now, do you recall what Mr. Ingram said about Mr. Fairchild beyond just that he was in the oil and gas business?

Judge NIXON. Well, I think at that time he just said he was very successful in it.

Mr. STEWART. OK. Did you, following that conversation with Mr. Ingram, give any further consideration to Mr. Fairchild as a businessman?

Judge NIXON. Yes, I did.

Mr. STEWART. And what did you do?

Judge NIXON. Well, later I checked on Mr. Fairchild with several people. I do not recall who, but one of them, of course, was "Bud" Holmes.

Mr. STEWART. And what did you ask those people?

Judge NIXON. I asked "Bud" Holmes about Mr. Fairchild's expertise and success in the oil and gas business and something about his reputation. I did not say, "What is his reputation?" but I asked about him. I had always heard good things about him.

Mr. STEWART. And what response did you receive when you asked around about Mr. Fairchild?

Judge NIXON. Well, I received the response that he was very successful, that you could not pick a man who was more successful or had more expertise to invest with than Wiley Fairchild; that is, in the oil and gas business.

Mr. STEWART. All right. I think I might have skipped over this quickly. You were describing educational expenses. Did you foresee at that time and were you experiencing some extraordinary educational expenses?

Judge NIXON. Yes. We had a son who suffers from a learning disability, dyslexia. He is hyperkinetic and had the problems that went with that, and we had to put him in various learning disability schools, try different ones throughout the country: Kentucky, New Mexico, et cetera. And expenses were pretty great.

Mr. STEWART. Now, following this information you gathered informally, I guess, concerning Mr. Fairchild, did you have any further conversation with Carroll Ingram about Mr. Fairchild?

Judge NIXON. Yes. I called Carroll—I think it was in about the spring of 1979—and I told him that I was interested in investing, if possible, with Mr. Fairchild or anyone else. And I asked Carroll if he had any investments he was going to make of any kind that he thought were good; or even if he was not going to invest, if he thought something looked promising, that looked pretty good, that I would appreciate his talking to me about it because I was interested in investing. Most especially, I mentioned Mr. Fairchild's name.

Mr. STEWART. What was Mr. Ingram's response?

Judge NIXON. He said he would talk to Mr. Fairchild and get back with me and determine whether he had anything available or whether he could offer me an investment.

Mr. STEWART. Thereafter, did you call Mr. Ingram and speak to him on that subject again?

Judge NIXON. Yes. I called him a couple of times——

Mr. STEWART. And what was the nature of those——

Judge NIXON. —because I had not heard from him. I talked to him in about the summer, possibly early summer of 1979, and...well, he called me then. I had called him a couple of times. He called me in the summer of 1979 and told me he had talked to Mr. Fairchild and Mr. Fairchild would be delighted to put me in some mineral interests, have me purchase some mineral interests. He was not any more specific than that at that time, and he told me that he would get back in touch with me when he had the opportunity to sit down and talk to Mr. Fairchild in more detail.

Mr. STEWART. Did he tell you when you would hear more specifically about the mineral interests?

Judge NIXON. He told me as soon as he could talk to Mr. Fairchild at that time.

Mr. STEWART. All right. When did you next hear from Mr. Ingram on this subject?

Judge NIXON. In the latter part of 1979. I had seen Carroll a couple of times in the interim and talked to him, and also I had talked to him on the phone a couple of times, I would say. And he called me in the latter part of 1979 and told me that he had had the opportunity to sit down with Mr. Fairchild, and Mr. Fairchild had to offer three wells. He told me the counties: Marion County and Covington County, Mississippi, and Mobile County, Alabama.

I had previously told Carroll when I talked to him in the spring of 1979 that I could invest—that is, I could borrow about $10,000 so he knew what type investment I was looking for, the range of what I could afford to borrow and invest.

At this time, I asked Carroll what the cost would be to me—that is, in late 1980—and he told me $9,500.

Mr. STEWART. You meant late 1979 when you were having this conversation?

Judge NIXON. Yes. Last part of 1979.

Mr. STEWART. All right.

Judge NIXON. And I asked him what he thought about these wells. He said he did not know much about them, but he had a great deal of confidence in Mr. Fairchild's expertise. He reminded me that this was a risky business. I acknowledged that I knew that, but I was willing to take the risk if he recommended them to me and if Mr. Fairchild thought they would be a reasonable investment.

Mr. STEWART. Now, did you negotiate with Mr. Ingram on the price?

Judge NIXON. No.

Mr. STEWART. Why not?

Judge NIXON. Well, I thought it would be fair. I knew Carroll Ingram was a person of integrity, an honest person, and I had heard Mr. Fairchild was a very reputable man and businessman.

Mr. STEWART. Did you personally have any expertise in the oil and gas business?

Judge NIXON. No, I did not.

Mr. STEWART. Had you intended to pressure Mr. Ingram in any way or Mr. Fairchild?

Judge NIXON. Absolutely not.

Mr. STEWART. Now, did there come a point after this conversation with Mr. Ingram in late 1979 where you met with Mr. Fairchild?

Judge NIXON. Yes. In the first part of 1980—I might say after the 1979 conversation, I did not hear from Mr. Ingram for a while, and I called him a couple of times or saw him. And I asked him when we were going to conclude the transaction, and he told me whenever he heard from Mr. Fairchild. He said, "He is the kind of man you cannot push. He will take his own sweet time." So I said, "Fine."

In 1980, Carroll called me and told me that Mr. Fairchild would like to meet me, that he liked to know people that he was going to put into an oil and gas investment, and we made arrangements for me to meet Mr. Fairchild at his office in Hattiesburg at a predetermined time.

Mr. STEWART. Do you remember about when that was?

Judge NIXON. I think it was in about late February or early March of 1980.

Mr. STEWART. All right. And was anyone there in additional to you and Mr. Fairchild?

Judge NIXON. Yes. Carroll Ingram was there.

Mr. STEWART. What was the conversation on that occasion?

Judge NIXON. Well, I came into Mr. Fairchild's private office following instruction of Carroll how to get in, and knocked on the door, that is. I was admitted, and Carroll and Wiley Fairchild were there, and he introduced me to Mr. Fairchild. Mr. Fairchild said, "Judge, I am glad to get to know you. I have always wanted to meet you." And we exchanged pleasantries and talked a little bit.

I think he asked me then why I wanted to invest. He said Carroll told him that I wanted to, and I told him about educating my children. And he said, well, he thought that was commendable, and it made him feel good about the investment. He did mention the three counties again at that time.

Mr. STEWART. OK. Did you seize this opportunity to try to negotiate on the price, beat him down?

Judge NIXON. No, I did not.

Mr. STEWART. Why not?

Judge NIXON. For the same reason I told you previously.

Mr. STEWART. Now, you heard Mr. Ingram testify here on Friday that he thinks that you and he met with Mr. Fairchild in 1981, and I believe on Wednesday Mr. Fairchild testified that he thought he had first met you in 1982. Can you account for this difference in the recollections on the dates?

Judge NIXON. Well, of course, it is many years ago, and people's recollections differ. That is my best recollection from what I can reconstruct. I know Carroll Ingram and probably Mr. Fairchild both have given their best estimates trying to search back, and it is just an honest difference of recollection or opinion, is all I can say.

Mr. STEWART. You have referred to the exercise of trying to reconstruct these events. Can you just kind of briefly describe that process?

Judge NIXON. Yes. By looking at documents, by talking to people, by searching your memory—it is very difficult to reconstruct from years back, but that was the best I could do.

Mr. STEWART. Now, did you feel at that point in early 1980 when you met in Mr. Fairchild's office that you had an agreement with Mr. Fairchild to go forward with an oil and gas investment?

Judge NIXON. Yes, definitely.

Mr. STEWART. Did you consider why Mr. Fairchild was interested in investing with you?

Judge NIXON. Well, he made a profit on the deal from what I understand, a pretty good profit, and Carroll had apparently talked to him. I think Carroll represented him, and they were kin, and Carroll and I were good friends. I guess—I do not know other than that.

Mr. STEWART. Did you have any notion that that was his business to be involved in oil and gas investments?

Judge NIXON. Yes. Certainly did.

Mr. STEWART. Now, was there much activity on this investment after the verbal agreement, this oral agreement you have described?

Judge NIXON. What do you mean?

Mr. STEWART. Well, right away, was there immediate activity to close the deal and sign all the documents?

Judge NIXON. No, definitely not. Just the contrary.

Mr. STEWART. I think you testified that you understood that Mr. Fairchild does things at his own speed.

Judge NIXON. That is correct.

Mr. STEWART. Did you try to demand that documents be brought over and that the deal be finished just as soon as possible?

Judge NIXON. No.

Mr. STEWART. Did you ever hear from Mr. Ingram or Mr. Fairchild about the investment becoming formalized?

Judge NIXON. Yes. In the first part of 1981, Carroll Ingram called me at my chambers in Biloxi and told me he was coming to Biloxi on business—I think it was the next day or the following day—and that he had had an opportunity to sit down with Mr. Fairchild and get instruments of conveyance signed, and that he was coming down to close out the matter.

I asked him why he had not given me more advance notice so that I could arrange my financing, as I had previously requested. He said Mr. Fairchild was going to carry the paper, I think is the term he used, finance the matter and charge me a reasonable rate of interest.

Mr. **Stewart**. Did you talk at that time about how much the interest rate would be or the length of the term of the loan?

Judge **Nixon**. No. I thought it would be fair. Of course, when I looked at it, when I had the opportunity to look at it, I would, of course, at that time have an opportunity to see what it was.

Mr. **Stewart**. All right. When was the first time that you saw the documentation for this transaction?

Judge **Nixon**. When Carroll brought it to my office in Biloxi.

Mr. **Stewart**. Was that in the next day or two?

Judge **Nixon**. Yes.

Mr. **Stewart**. And did you play any role at all in drafting the deeds or the notes that you signed?

Judge **Nixon**. No.

Mr. **Stewart**. I take it you would not have had to sign the deeds yourself?

Judge **Nixon**. That is correct. Just the notes. When Carroll came, he brought the conveyances and notes.

Mr. **Stewart**. All right. Now, when Mr. Ingram brought the notes to you, was there any conversation concerning any feature of those notes?

Judge **Nixon**. Yes. The dates on the notes were February 25, 1980, and this was 1981, and I asked Carroll about that. He said that it was customary in the oil and gas business to date the instruments to conform to the time that the agreement had been made for various reasons.

Mr. **Stewart**. Did you find that explanation satisfactory?

Judge **Nixon**. Yes.

Mr. **Stewart**. Did you speak with Mr. Ingram at that time about recording the royalty deed?

Judge **Nixon**. I asked him to record them for me if he would.

Mr. **Stewart**. Do you know who paid the fees for that recording?

Judge **Nixon**. I do not know. If I was billed for them, I paid them, but I do not know.

Mr. **Stewart**. Do you know if those fees were very much?

Judge **Nixon**. I think the total recording fees did not exceed $15.

Mr. **Stewart**. Now, just to kind of summarize a little, would it be fair to say that when you entered this transaction that you were basically trusting Mr. Ingram and Mr. Fairchild to set a fair price on this?

Judge **Nixon**. Yes.

Mr. **Stewart**. And had you been given any reason at all to think that Mr. Fairchild was providing you some special price?

Judge **Nixon**. No, I did not.

Mr. **Stewart**. I want to move a little now to kind of a related subject.

Judge **Nixon**. In fact, Mr. Fairchild had reminded me that this was risky business, and I acknowledged that at the previous time when I met with him in his office.

Mr. **Stewart**. Before you even spoke to Carroll Ingram, had you at some time in your life had oil and gas investments?

Judge **Nixon**. Yes. Before I went on the bench, I had made a few little investments and lost money.

Mr. **Stewart**. At about this time—and I am talking about the 1979 through 1981 period we have been discussing here—did you make other oil and gas investments?

Judge **Nixon**. In 1981,I made three, yes.

Mr. **Stewart**. If I could ask you to look at Exhibit N-20 that is in the book of exhibits that we submitted to the subcommittee—it is prefix "N," then No. 20—this was an exhibit at the trial in your case. Can you explain just as an overview what is reflected on Exhibit N-20?

Judge **Nixon**. I think I can see this one without my glasses.

Yes. The three investments that I just mentioned.

Mr. **Stewart**. So these are the three investments that did not involve Mr. Fairchild?

Judge **Nixon**. That is correct.

Mr. **Stewart**. Can you explain about that first investment, how you came to make that investment for Pattison Petroleum Corporation?

Judge **Nixon**. Yes. Among other people, I had talked to my friend, Bill Pittman, who was also my banker. He was president of the branch bank of the First Mississippi National Bank in Biloxi with which I did my primarily banking business. Bill and I socialized some also. And I had talked to him about possible investments prior to this time, over a period of a few years. And he contacted me and told me about this Pattison Petroleum Corporation investment; that is, the possibility of making that. He said that others in the area had made investments in these wells being drilled by Pattison Petroleum up in the Midwestern States somewhere, and that they had been quite successful. Some paid and some did not.

Mr. **Stewart**. All right. Now, was Mr. Pittman just a friend you had known over the years?

Judge **Nixon**. Yes. And my banker.

Mr. **Stewart**. OK. And did you negotiate over the price of these investments with Mr. Pittman?

Judge **Nixon**. No.

Mr. **Stewart**. How did you pay to get into these investments?

Judge **Nixon**. I borrowed money from the bank.

Mr. **Stewart**. All right. Now, that second investment there, the Chevron Point Coupe Parish, Louisiana, how did you come to make that investment?

Judge **Nixon**. A friend of mine in Jackson, friends of ours, Barbara's and mine, Robert and Barbara Stockett, who were successful in the oil and gas business, thought that this was a very promising well in Point Coupe Parish, Louisiana. There had been a lot of good production in that area, according to Robert, and he bought a much larger interest than I did. And we purchased this, as I recall, from them, a small part of their interest. I borrowed money to buy that with also from the bank.

Mr. **Stewart**. So you borrowed money from the bank for this second investment?

Judge **Nixon**. That is correct.

Mr. **Stewart**. Did you negotiate with Mr. Stockett on the price?

Judge **Nixon**. No.

Mr. **Stewart**. On the third investment there, Geo-Southern Corporation, how did you come to make that investment?

Judge Nixon. Through Mr. Pittman again, and he invested, I think, a like amount himself in that particular well.

Mr. Stewart. Again, did you negotiate on price with him?

Judge Nixon. No.

Mr. Stewart. How did you come up with the money for that investment?

Judge Nixon. I borrowed from the bank.

Mr. Stewart. Now, these investments were all made in the same year, I guess, 1981?

Judge Nixon. Yes.

Mr. Stewart. Were these reflecting your attempt at that time to generate some outside investment income for your educational expenses?

Judge Nixon. Yes.

Mr. Stewart. All right. Now, if you could, just quickly explain how each of these investments turned out, at least as they are reflected in this exhibit, which runs through 1984.

Judge Nixon. Well, I do not think I recovered my investment in the first two, and the third one, the Geo-Southern, I got my money back, no more, no less than I had paid.

Mr. Stewart. How did that come to pass?

Judge Nixon. Well, I was informed that there was a securities fraud claim being made by investors against the sellers of this particular royalty interest.

Mr. Stewart. You had had no contact with the sellers?

Judge Nixon. That is correct.

Mr. Stewart. You had only dealt with Mr. Pittman?

Judge Nixon. Yes.

Mr. Stewart. OK. Please go on.

Judge Nixon. And I thought a claim was going to be made. I did not know if a suit was going to be filed, and I assumed that if a suit was filed, I would be notified in advance. And I figured if it was filed, it would be filed in Texas where the wells were located and the buyers were located—pardon me, where the sellers were located.

Mr. Stewart. And is that what happened?

Judge Nixon. No.

Mr. Stewart. What did happen?

Judge Nixon. What happened was my deputy courtroom clerk brought a complaint in and said, "Judge, here is a case of yours." And I said, "Well, what is so unusual about it?" She handed it to me, and she said, "You have been allotted this case, and you are a plaintiff in it."

Mr. Stewart. So the case had been filed in your court, and you had been assigned to it?

Judge Nixon. Right.

Mr. Stewart. And you were listed as a plaintiff without notice to you?

Judge Nixon. Yes.

Mr. Stewart. What did you do at that point?

Judge Nixon. At that point, I immediately recused myself, told my deputy courtroom clerk to put it back into the system so it could be reassigned according to our local rules. And also I went to see Bill Pittman to tell him that I could not remain an owner of this interest and asked him—I did not feel comfortable, and I did not think it was right, since it was pending in our court and I was one of the judges of that court. Even though I had recused myself, I did not think that was kosher, so to speak.

So I asked him if could try to find a buyer for me.

Mr. STEWART. And did you sell that interest?

Judge NIXON. Yes. Bill told me, he said, "Well, I will put you into it, Judge. I have got the interest. I think I am going to make money through this lawsuit for sure." He said, "We have got a strong case, and I will just buy your interest back and pay you for it less what you have already received from it."

Mr. STEWART. And is that what happened?

Judge NIXON. Yes.

Mr. STEWART. Just to kind of summarize on this subject, would it be fair to say that these other three investments were not as successful as the Fairchild investment?

Judge NIXON. That is correct. Especially two wells of the three and the Fairchild investment.

Mr. STEWART. OK. How much did you end up making in terms of revenue out of the Fairchild investment?

Judge NIXON. In excess of $50,000.

Mr. STEWART. That is minus your costs?

Judge NIXON. Yes.

Mr. STEWART. If you knew that the Fairchild investment was going to be so good, why did you make these other investments that turned out poorly?

Judge NIXON. I did not know the Fairchild investment was going to be so good. Obviously.

Mr. STEWART. So you had no expectation that Wiley Fairchild had put you in a deal that could not lose?

Judge NIXON. I never did know that he put me in a deal that could not lose. As a matter of fact, he cautioned me and I knew that oil and gas ventures or investments were risky. As a matter of fact, he told me, he said, "Most of them do not pay, you know, the majority." I said I was aware of that but willing to take the risk if he thought it was a fair risk, a good risk.

Mr. STEWART. Now, about this time, I want to change the subject slightly and ask about your judicial disclosure forms for these years. Under the Federal law, you have to make an annual judicial disclosure statement; is that correct?

Judge NIXON. That is correct. By May the 15th of one year for the previous year.

Mr. STEWART. If I could direct your attention to Tab 26 in the subcommittee's exhibits, which includes three of the judicial disclosure forms, I believe, for the years 1980 and 1981—it may be just those two years. I think 1982 may be there. Yes, I think 1982 is there also.

Just right at the first form, which covers the calendar year 1980 and carries the date May 8, 1981, as when you signed it, there is no reference to the Fairchild investment on that form. Can you explain why that was not reflected on the form?

Judge NIXON. Yes. Because the investment did not become legally binding—that is, the sale—until 1981 when it was reduced to writing.

Mr. Stewart. And is that the result of a Mississippi statute?

Judge Nixon. Yes. Mississippi law requires that a sale of real property or an interest in it be reduced to writing in order to be effective, legally effective.

Mr. Stewart. All right. Under the judicial disclosure rules—well, you have testified that you thought you had an oral agreement or a verbal agreement with Mr. Fairchild in 1980. That is right?

Judge Nixon. That is correct.

Mr. Stewart. Under the judicial disclosure rules, do you believe it would have been just as proper to report that investment in 1980?

Judge Nixon. Yes, because once the deed was signed in 1981, conveyances were signed, then they became legally effective under Mississippi law as of the date stated on the deeds.

Mr. Stewart. So by the time you filled out this report, or at least in retrospect it seems to you you could have reported it or not reported it?

Judge Nixon. That is correct.

Mr. Stewart. Now, you understand there was an allegation before the grand jury that the back-dating of the documents—and by back-dating I mean simply using that date in 1980 on the notes and the deeds—had been done to try to make it appear that the agreement had predated the arrest of Drew Fairchild in August of 1980? You are aware of that now, anyway.

Judge Nixon. I am aware of that now, yes. As a matter of fact, I think that was mentioned to me in the first interview.

Mr. Stewart. You mean interview with the investigators in 1984?

Judge Nixon. Correct.

Mr. Stewart. All right. Let us stay back here for now.

Judge Nixon. All right.

Mr. Stewart. Now, at the time this judicial disclosure decision was made, your decision on what to include on this form, did you even know that there was a Drew Fairchild?

Judge Nixon. No.

Mr. Stewart. All right. If you had wanted to do what the grand jury was investigating, if you had wanted to show the agreement had occurred in 1980, to leave a paper trail for that, could you have simply reported it in your 1980 form?

Judge Nixon. Certainly, because the deeds were executed, conveyances were executed in either late February or early March of 1981. The disclosure form was not due until May the 15th of 1981 for the year 1980. I could have probably and legally, if I had wanted to, shown that to be a 1980 transaction on my judicial disclosure form.

Mr. Stewart. But I take it you did not because that was simply not anything you cared about one way or another?

Judge Nixon. That is correct.

Mr. Stewart. All right. If you could turn to the sixth page in that Tab 20, it is a page from the 1981 judicial disclosure form, which was filed in May of 1982. On that page at the bottom, if you have it, there is a reference to overriding royalty interest.

Have you got that there?

Judge NIXON. Yes.

Mr. STEWART. OK. Overriding royalty interest for W. R. Fairchild Construction Company, Ltd., and the date reflected is February 25, 1981. Do you know how that 1981 date came to be reflected even though the notes had the 1980 date?

Judge NIXON. Well, my CPA, who is now deceased, filled these forms out for me. I do not recall specifically, but I am sure that he did some checking of some kind and could possibly have even talked to me about it. I do not recall.

Mr. STEWART. And do you think to report that as an investment that was completed on February 25, 1981, was accurate?

Judge NIXON. Yes.

Mr. STEWART. So it turned out that as it was reported, it was reported on the date on which the transfer of mineral interests, your purchase of those mineral interests became legally effective?

Judge NIXON. That is correct. At the time the conveyances were delivered and I signed notes.

Mr. STEWART. OK. Now, I want to move away from the notes and the disclosures for a minute.

Did you meet with Mr. Fairchild in 1981 after the point at which you had signed the notes and you received the deeds?

Judge NIXON. Yes. I saw him in May of 1981. About that time.

Mr. STEWART. Now, had he ever expressed an interest in remaining in touch with you?

Judge NIXON. Yes. He had asked me—when I was in his office before, he had mentioned that he had others who had purchased mineral interests from him, and he named some of them. He said they kept in touch with him from time to time, and he said he would appreciate my doing the same. If I am in Hattiesburg holding court or passing through, or even get a chance to make a phone call, he would just appreciate my staying in touch with him, because all these others did, and he was sort of a recluse type individual and he, I think, liked people to stay in touch with him.

Mr. STEWART. And had you done that?

Judge NIXON. Yes, I had.

Mr. STEWART. By telephone primarily?

Judge NIXON. Yes.

Mr. STEWART. How did it arise that in 1981 you went to see him?

Judge NIXON. Well, as best I recall, I was holding court in Hattiesburg or passing through—I do not remember which—and stopped in to see him.

Mr. STEWART. And this was in his office out on Highway 49?

Judge NIXON. Yes. W. R. Fairchild Construction Company office.

Mr. STEWART. All right. And was there any particular subject that prompted your dropping by? Was there any subject you wanted to talk to him about or you knew he wanted to talk to you about?

Judge NIXON. No. While I was there, of course, we discussed generally, I am sure, the progress of the wells, among other things.

Mr. STEWART. Do you recall that you said to him at that time that if you could help him you would, and if you could not help him you would tell him so, or words to that effect?

Judge NIXON. I think so. In parting, I made that comment offhand.

Mr. **Stewart**. Was that a big focus of your conversation?

Judge **Nixon**. No, of course not.

Mr. **Stewart**. Now, did you say that because you were concerned, something Mr. Fairchild had told you gave you some concern that he was going to ask you for something, to do something improper?

Judge **Nixon**. No.

Mr. **Stewart**. Was that something you said to other people?

Judge **Nixon**. Yes. I am sure I have.

Mr. **Stewart**. All right. When did you begin to receive royalties from these investments with Mr. Fairchild?

Judge **Nixon**. In March of 1982.

Mr. **Stewart**. What did you do with the royalties?

Judge **Nixon**. Deposit them in my bank account, the checks.

Mr. **Stewart**. Do you recall when you started to try to pay off the notes?

Judge **Nixon**. I made a payment on the notes in 1981—I mean, pardon me, 1982, $5,000. I think it was some time in the middle of the year.

Mr. **Stewart**. Regardless of the amount, you do recall you paid something in 1982?

Judge **Nixon**. Yes. And then another one later that year.

Mr. **Stewart**. Were those payments due at that time?

Judge **Nixon**. No. The notes provided that they would be paid in full, all three of them, three years from the date in one payment; that is, February the 25th, 1983.

Mr. **Stewart**. Why did you pay part of them early?

Judge **Nixon**. To save some interest.

Mr. **Stewart**. And do you know how it was determined how much interest you owed on the note when you made these payments?

Judge **Nixon**. Yes. I would have my secretary call Mr. Fairchild's office and determine how much interest was due to that date if I had some money available. We would get the amount of interest, and we would pay that, plus the difference on principal—that is, on the amount I had available to pay on would go to principal.

Mr. **Stewart**. So you never sat down and calculated the interest?

Judge **Nixon**. No, I did not.

Mr. **Stewart**. You just got the information from Mr. Fairchild's company?

Judge **Nixon**. That is correct.

Mr. **Stewart**. Did you ultimately pay off the notes on time?

Judge **Nixon**. I paid one of them off I think a couple of months early, and I paid the other two off about three or four days, I think approximately four days late.

Mr. **Stewart**. Now, did you ever speak to Mr. Fairchild, or did he ever speak to you about additional investments?

Judge **Nixon**. One time, in October of 1982.

Mr. **Stewart**. And what was the occasion on which you had this exchange?

Judge **Nixon**. A reception given for me in Hattiesburg by the South Central Mississippi Bar Association after I had just become chief judge of the district. There was one in Hattiesburg and one given by people in Biloxi and one given by the mayor of Jackson in that period of time.

Mr. STEWART. How did you come to see Mr. Fairchild there?

Judge NIXON. Well, he was there among many other people, and my wife was there with me. A big crowd there. And I introduced Barbara to him and told her that Mr. Fairchild was the man we had invested with and were receiving royalties as a result of that, which she knew. And she exchanged pleasantries. Then he pulled me aside a little later, I think it was, during that reception, right there. We did not leave the room, of course. And he said there was another possible investment involving some property he called school property or something—I do not remember the name of it—that he may want to talk to me about, I might be interested in investing in it. I told him I would be happy to do so, but I heard nothing further about that at all.

Mr. STEWART. You never heard anything from him further on that.

Judge NIXON. That is correct.

Mr. STEWART. Had you asked him about further investments at that point?

Judge NIXON. No.

Mr. STEWART. Have you ever asked him about further investments?

Judge NIXON. No.

Mr. STEWART. Judge Nixon, I need to turn now to the Drew Fairchild matter and his arrest. You have already testified that you were not aware that Mr. Fairchild had a son named Drew at the time you went into the investment. How did you first learn that Mr. Fairchild did have a son named Drew?

Judge NIXON. I read something in the newspaper in the first part of 1983, I think the Hattiesburg American paper.

Mr. STEWART. Do you recall the substance of the report in the newspaper?

Judge NIXON. It was a newspaper article critical of "Bud" Holmes' handling of the Drew Fairchild case. I think it had been passed to the files, the inactive file, placed in the inactive file, and then reactivated or put back on the active docket.

Mr. STEWART. All right. If I could ask you to just look at Tab 20 in the subcommittee's materials, there are copies of a couple of newspaper articles from January of 1983 in the Hattiesburg American. They were trial exhibits as well. I ask you if you can identify those as appearing to be the stories you ran into.

Judge NIXON. Yes, they appear to be.

Mr. STEWART. All right. And you saw them roughly at the time they appeared?

Judge NIXON. Yes.

Mr. STEWART. Now, did there come a time not too shortly after that when Mr. Fairchild mentioned his son to you?

Judge NIXON. Yes.

Mr. STEWART. And when did that happen?

Judge NIXON. That was in March of 1983.

Mr. STEWART. All right. Now, when he mentioned Drew to you, did you recall something about those newspaper articles?

Judge NIXON. Yes, I did.

Mr. Stewart. Was that mentioned during the conversation?

Judge Nixon. Yes.

Mr. Stewart. Now, you told him you had seen something in the paper?

Judge Nixon. Correct.

Mr. Stewart. Now, have you made an attempt to try to nail down the date of this conversation with Mr. Fairchild?

Judge Nixon. Yes.

Mr. Stewart. And when have you concluded that conversation happened?

Judge Nixon. March 11, 1983.

Mr. Stewart. What do you associate that with?

Judge Nixon. Well, I know I had just seen this article in the newspaper a short time before, and I checked back and determined that it was while I was in Hattiesburg trying this bank robbery case, Douglas "Chico" Patterson, on March 10th and 11th that I had occasion to visit with Mr. Fairchild.

Mr. Stewart. And did your visit with Mr. Fairchild have anything to do with the fact that you had just paid off the notes on the investment?

Judge Nixon. Yes. I had just previously paid them off the very first part of March, and I thought it would be a good occasion to go talk to him and thank him again and visit with him.

Mr. Stewart. Had you received any invitation or request from Mr. Fairchild to come see him?

Judge Nixon. No.

Mr. Stewart. Was this just another occasion on which you were just trying to say hello and make a social call as he had requested?

Judge Nixon. Yes.

Mr. Stewart. What happened when you arrived at the office? Well, let me ask actually about what time of day was it that you went there.

Judge Nixon. I would say it was early afternoon.

Mr. Stewart. Had the jury come back in the bank robbery case?

Judge Nixon. Yes.

Mr. Stewart. OK. I am sorry. Now, what happened at that point?

Judge Nixon. Well, while the jury was out deliberating, I had called Mr. Fairchild and told him I was in town and thought I would have the opportunity—I did not think the jury would be out long, and they were not—and had the opportunity to come visit with him. I think he told me to come by after lunch, and I did.

I walked into his office. I went into his private office after knocking, and he and his brother Rodney were in there. We were in there just a little while, and he turned to Rodney and, in a gruff voice, told him to get out of there, like that. I did not know what it was about. He appeared to be angry. I thought he was angry at Rodney.

Mr. Stewart. Did Mr. Rodney Fairchild leave then?

Judge Nixon. Yes, he did.

Mr. Stewart. Then what happened?

Judge Nixon. He said, "Judge, you are a good man. You have got a good reputation. I am mad as hell about something." He said, "I have got a son named Drew, and he is involved in a drug matter at the Hattiesburg airport." I said, "Yes, I just read something recently in the newspaper about it."

And he said, "Well, he has given me trouble all his life." He said, "I do not give a damn what happens to him. I think he has got a pretty good deal," he said, "but I am tired"—"I am not asking you to do anything for Drew. I am not asking anything for Drew. But I have got a good name, good reputation, and it is being drug through the mud by the news media." And he said, "I believe I am being blackmailed by "Bud" Holmes and possibly Carroll Ingram is in on it."

Mr. STEWART. Did he refer to anybody else who might have been involved in the drug transaction?

Judge NIXON. He did say that another person—and I did not recall the name, still do not know, recall the name he mentioned at that time—had been involved and had not been charged or indicted. He was mad about that also.

Mr. STEWART. Did he seem particularly concerned about the press attention that had been given to his son's case?

Judge NIXON. Absolutely.

Mr. STEWART. Now, did he ask you to do anything about the blackmail allegation he had made?

Judge NIXON. No.

Mr. STEWART. Did you form any impression or have any understanding as to whether he might have wanted you to do something?

Judge NIXON. I had an impression that he might want me to mention, that he wanted me to mention that to "Bud" Holmes. That was my impression. He did not ask me to, and I certainly did not volunteer to.

Mr. STEWART. Did you say anything in response to this accusation he made?

Judge NIXON. I was so shocked or flabbergasted, as you might say, I did not respond, to my knowledge. I was just completely surprised, because here was a man that I had invested with, an elderly man, good businessman, apparently sincere in what he was stating. But at the same time, I did not believe that "Bud" Holmes would be involved in any blackmailing, and I knew Carroll Ingram would not. They were long-time friends of mine and, to say the least, I was completely shocked and did not know what to say and did not say anything, to my recollection.

Mr. STEWART. Did that conversation go on long after that?

Judge NIXON. No, it did not. I got out as fast as I could, told him I had to leave, and nice being with him.

Mr. STEWART. Where did you go next after you left Mr. Fairchild's office?

Judge NIXON. I went back to my chambers in the Federal building in Hattiesburg.

Mr. STEWART. Did you come to see "Bud" Holmes later that day?

Judge NIXON. Yes. Before I had called Mr. Fairchild on the phone, while the jury was out deliberating, I had called "Bud" and asked him while I was in Hattiesburg if I could come borrow his Hank Williams' Sr. records, old records that he had had, and I had heard some before at his farm. He had talked a lot about them, and I wanted to take them, if I could, and record them on tapes at home.

Mr. STEWART. All right. When did you go see Mr. Holmes at his farm?

Judge NIXON. He had told me to meet him out there after five o'clock, and I did. I drove out there.

Mr. STEWART. And you arrived there in the late afternoon or early evening?

Judge NIXON. Yes.

Mr. STEWART. When you arrived and first saw Mr. Holmes, did it appear that he had had anything to drink before you saw him?

Judge NIXON. Definitely.

Mr. STEWART. When you arrived at his farm and began talking, where did you go?

Judge NIXON. In his den. It consisted of some chairs and a couch in the middle of the room with a telephone on each side, I think, of the couch or chairs. And he had a king-size bed over on the other wall, and it had a counter in there with the record player and a built-in bar.

Mr. STEWART. Now, did you start listening to the records?

Judge NIXON. Yes. Playing them.

Mr. STEWART. What was the conversation about?

Judge NIXON. And had a drink.

Mr. STEWART. OK. What was the conversation about?

Judge NIXON. Well, we just chit-chatted. He always talked about Walter Payton, whom he represented his agent and other professional players, and I think this was about draft time. I think we discussed that and other matters generally.

Mr. STEWART. All right. And you did have a drink with Mr. Holmes and he continued to drink?

Judge NIXON. Yes. And he was on the phone, as he always was, taking calls and making calls. He did what I always accused him of——

Mr. EDWARDS. Mr. Stewart, this is a very important part of the testimony, but we do have to recess. And if we go now, we can get back very quickly. So the committee will recess for not more than a few minutes.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Mr. Stewart, would you please continue? You might back up a little bit.

Mr. STEWART. Thank you, Mr. Chairman.

Let us just try to set the stage again. It was not that long ago, but just to make it clear.

We were talking about a time in the late afternoon or early evening of this day in March of 1983 when you were at Mr. Holmes' farm; is that correct?

Judge NIXON. Yes.

Mr. STEWART. And you had previously in the day gone by Mr. Fairchild's office, and he had made this accusation to you.

Judge NIXON. That is correct.

Mr. STEWART. All right. Now, you arrive at the farm and meet Mr. Holmes, and I believe you described his condition. How did he appear?

Judge NIXON. He had been drinking quite a bit, apparently.

Mr. STEWART. Fine. And you went into his den. I take it that is a place where he would meet with friends?

Judge NIXON. Yes.

Mr. STEWART. And you were playing these Hank Williams' records on the stereo?

Judge NIXON. Yes, and selecting various albums. He had quite a few of them.

Mr. STEWART. All right. Now, just to cover Hank Williams and get him done with for here, you did at the end of your visit there actually borrow some of those records, did you not?

Judge NIXON. Yes.

Mr. STEWART. And you took them home and taped off them?

Judge NIXON. Well, we had intended to, but we never did get around to taping them for some reason. I do not know why.

Mr. STEWART. And is it not true that by the time you got indicted you still had those records in your possession?

Judge NIXON. Yes.

Mr. STEWART. And they ended up being a trial exhibit?

Judge NIXON. Yes.

Mr. STEWART. Now, I believe you were describing Mr. Holmes' taking some phone calls or placing phone calls while you were listening to the music.

Judge NIXON. That is correct.

Mr. STEWART. Was that characteristic of Mr. Holmes' behavior?

Judge NIXON. Very definitely. He is known for that characteristic by everyone who knows him. That is probably the most outstanding characteristic. One of his most outstanding.

Mr. STEWART. He is just very quick to pick up a phone?

Judge NIXON. Very. Sometimes he is on two phones at the same time.

Mr. STEWART. Now, did you mention at any time during that evening to Mr. Holmes the accusation that Mr. Fairchild had made to you earlier that day?

Judge NIXON. Yes, I did.

Mr. STEWART. And how did that come up? Why did you mention it?

Judge NIXON. It was weighing on my mind, and I thought it was nonsense. I thought it was unfounded, and I thought nevertheless that it was something—it was a misunderstanding, I felt, that could be straightened out and should be. And I felt I owed it to him. I had known him a long time; you know, we were personal friends. And here was this accusation of this type being made against him. I felt I owed it to him to relate it to him so that something could be done to straighten out the misunderstanding and correct it—although I thought it was nonsense, the blackmail allegation.

Mr. STEWART. Do you recall what you said to him, roughly?

Judge NIXON. I said something to the effect that, "'Bud,' I have been talking to Wiley Fairchild, and he has accused you of blackmail in connection with the matter you are handling about his son."

Mr. STEWART. And what was Mr. Holmes' reaction?

Judge NIXON. Immediately he said...well, I will quote him, if I may.

Mr. STEWART. Sure.

Judge NIXON. He said, "The son of a bitch is paranoid. He has got so much money, he thinks everybody is after his money. He has got so much he will never be able to spend it." He said, "Let me tell you about that case." I said, "'Bud,' I do not want to hear about it."

Mr. STEWART. Now, was Mr. Holmes excited or was he casual about this?

Judge NIXON. He was excited.

Mr. STEWART. And when he said, "Let me tell you about the case," did you think he was just going to mention a few things? What did you think he was about to do?

Judge NIXON. Knowing "Bud" Holmes, I knew that it would take him three hours to tell me something that someone else could tell me in a half hour or less.

Mr. STEWART. When you asked him not to tell you about it—you said you really did not want to hear about the case—did he relent or did he carry on?

Judge NIXON. He did not carry on. He just said, "Well," he said, "the damn thing is worked out anyway. I do not know what he is talking about," or words to that effect. He also, "He is crazy," earlier.

Mr. STEWART. You are saying that Mr. Holmes said that Mr. Fairchild was crazy?

Judge NIXON. Yes.

Mr. STEWART. Now, did you not think that this was a serious allegation and that you really ought to hear out Mr. Holmes on the subject?

Judge NIXON. No, I did not. I thought it was a lot of nonsense. I thought it was a misunderstanding. I really could not make heads nor tails exactly what Mr. Fairchild meant by it except I gathered that in the terms and context of which he said it, it was dragging his good name through the mud by the news media.

Mr. STEWART. What happened next after you had had this exchange with Mr. Holmes?

Judge NIXON. Well, he was on the phone more, and I was listening to records.

Mr. STEWART. Could you hear him on the phone? Were you listening to his conversations?

Judge NIXON. No, I could not hear him. We were playing the records, and I would not try to listen to what he said anyway because he says so much on the phones when he gets on them.

Mr. STEWART. All right. Did Mr. Holmes at any point thereafter hand you the telephone?

Judge NIXON. Yes.

Mr. STEWART. What happened then?

Judge NIXON. He called me, "Judge, come here." And I was not facing him. I was facing the counter and playing the records and what have you. And I turned around and started that way, and he handed me the phone. He said, "Here, talk to Wiley Fairchild."

Mr. STEWART. What did you do?

Judge NIXON. Well, I took the phone, and I said, "Hello." And he said, "Judge, I am glad you mentioned that matter to 'Bud.'" And he said, "I am satisfied."

Mr. STEWART. Now, how did Mr. Fairchild sound to you?

Judge NIXON. His words were very slurred. He was either very drunk or half asleep or both.

Mr. STEWART. All right. Now, about what time of night was this, do you believe?

Judge NIXON. I would say somewhere around 7:00, 7:30, in that neighborhood.

Mr. STEWART. And when you took the phone and Mr. Fairchild made the statement to you, what was your understanding, or did you have any understanding as to what they had talked about before you got on the line?

Judge NIXON. You mean when Holmes handed the phone to me?

Mr. STEWART. I am sorry. Yes, when Mr. Holmes handed you the phone.

Judge NIXON. Well, I had assumed the blackmail allegation, because that is the only thing I had passed on to "Bud" Holmes or related to him. I assumed that because that is the only thing Mr. Fairchild had mentioned to me.

Mr. STEWART. What did you say to Mr. Fairchild when he said, "I am glad you mentioned that matter"?

Judge NIXON. I do not recall my exact response, but I am sure I must have said, "Well, good." I did not stay on the phone. I handed the phone back. I said, "Just a minute. 'Bud' wants to talk to you again," because when "Bud" handed me the phone, he said, "Let me talk to him when you finish."

Mr. STEWART. Did you stay around to hear what Mr. Holmes said to Mr. Fairchild then?

Judge NIXON. No, I did not.

Mr. STEWART. Did you hear what he said?

Judge NIXON. No.

Mr. STEWART. And after Mr. Holmes hung up on that phone call, did you talk to him or did he speak to you about that call

Judge NIXON. Yes. I said, "'Bud,' why did you do that? Why did you call Wiley Fairchild and put me on the phone without even talking to me about it?" He said, "Well, I wanted to get the damn matter straightened out."

Mr. STEWART. Did you have any further exchange on the subject?

Judge NIXON. Not on that subject, no.

Mr. STEWART. How much longer after that did you leave Mr. Holmes' house?

Judge NIXON. I do not know exactly, but it was not too longer after, Mr. Stewart. I had to drive back to my home in Ocean Springs, which is next to Biloxi, and it was approximately an hour-and-a-half to two-hour drive, and it was nighttime.

Mr. STEWART. Now, was there any mention that night between you and Mr. Holmes of your investment with Wiley Fairchild, the oil and gas interest that we have talked about?

Judge NIXON. No.

Mr. STEWART. Now, when you were on the phone with Mr. Fairchild, did you take the opportunity to thank him for putting you in that investment?

Judge NIXON. Of course not.

Mr. Stewart. Was there any mention that night, any mention by you or by Mr. Fairchild or by Mr. Holmes of passing Drew's case to the files?

Judge Nixon. Absolutely not. Of course, I did not hear any of his conversation with Wiley Fairchild.

Mr. Stewart. I understand. I am asking about your conversation, what you know.

Judge Nixon. No. Absolutely not.

Mr. Stewart. In your judgment, was Mr. Holmes sober at the time the phone call was placed to Mr. Fairchild?

Judge Nixon. No, he was not.

Mr. Stewart. Were you sober?

Judge Nixon. Yes.

Mr. Stewart. Had you had a drink or two that night, though?

Judge Nixon. Yes.

Judge Nixon. Now, this all happened, as you recall it, in March of 1983.

Judge Nixon. Correct.

Mr. Stewart. Now, did you ever make a reference to that phone call in a conversation with Carroll Ingram?

Judge Nixon. Yes. Later.

Mr. Stewart. OK. Now, how did that arise?

Judge Nixon. I was talking to Carroll. I do not remember the circumstances, but I mentioned to Carroll that Wiley Fairchild had mentioned a matter to me that I had passed on to "Bud" Holmes that had been taken care of or satisfied.

Mr. Stewart. OK. Now, did you tell Mr. Ingram that Wiley Fairchild had accused "Bud" Holmes and you of blackmail?

Judge Nixon. No, I did not.

Mr. Stewart. Why not?

Judge Nixon. Well, there were several reasons, of course. One was that I had never put any stock in it. I thought it was nonsense; I thought it was a misunderstanding. Apparently, it was because, as far as I knew, it had been resolved that night when Mr. Fairchild said he was satisfied. And I knew what Carroll's reaction would be being accused of-although it was not nearly as strong an accusation as Mr. Fairchild made against "Bud Holmes—of being blackmailed and cause a lot of trouble between them when I thought it was nonsense and thought it had been worked out; that is, the misunderstanding had been resolved.

Mr. Stewart. Now, I take it you referred to this matter with Mr. Ingram on the phone because at that time you were also talking about Mr. Fairchild and the investment you had had with him?

Judge Nixon. Yes.

Mr. Stewart. Now, the question may sound peculiar, but I do want to ask: Did you at any time think that this was such a serious accusation that Mr. Fairchild had made that you ought to immediately report it to the law enforcement authorities?

Judge Nixon. Of course not.

Mr. Stewart. And would that be—I do not want to drag you through it again, but for the reasons you have already described?

Judge Nixon. Yes.

Mr. Stewart. Now, you have testified throughout this case that you did not think at that time there was any substance to this blackmail accusation. Have you ever reconsidered that judgment at trial or thereafter, at your trial or thereafter, based on information you learned thereafter?

Judge NIXON. Yes, I have.

Mr. STEWART. And in what respect?

Judge NIXON. Well, of course, when the information came out later that—I hate to even say this, but when the information came out later that "Bud" Holmes had had Drew Fairchild indicted in State court to collect a fee for his friend, Bill Porter, who was Drew Fairchild's lawyer, I had some feelings about that matter, of course, to say the least.

Mr. STEWART. Did you think at that point that perhaps Mr. Holmes did have something to be ashamed of or concerned about in connection with possibly blackmailing Wiley Fairchild?

Judge NIXON. I am afraid so, Mr. Stewart.

Mr. STEWART. Had you known anything about that, that episode you just referred to where Mr. Holmes had Drew Fairchild indicted to help his friend, Bill Porter, collect a fee from Mr. Fairchild—had you heard anything about that until the time of your trial?

Judge NIXON. No.

Mr. STEWART. Mr. Holmes never told you about that?

Judge NIXON. Of course not.

Mr. STEWART. OK. I want to move on a little. At any point between these events in March of 1983 and when you met with the Federal investigators in April of 1984 for the first time—you have referred to that interview—did you have another occasion to hear about Drew Fairchild?

Judge NIXON. No.

Mr. STEWART. In that time period?

Judge NIXON. No.

Mr. STEWART. It is about 15 months. OK.

Had you ever met Drew Fairchild?

Judge NIXON. No.

Mr. STEWART. All right. Now, I want to move to that interview in April of 1984. You recall the occasion?

Judge NIXON. Yes, I do. Very well.

Mr. STEWART. Now, how did you first learn that there were Federal investigators who wanted to talk to you?

Judge NIXON. I was trying a case in Biloxi, and we took a recess and I came back to chambers, and my secretary told me that Weldon Kennedy, special agent in charge of the FBI in Mississippi, who was stationed in Jackson, had called long distance and wanted to talk to me. And she told him I was in court, and he left word for me to please call him, return his call, and I did at the recess.

He told me, he said, "Judge, there is a man down here from the Justice Department in Washington and one of my agents who want to come by and talk to you."

Mr. STEWART. All right. And what was your reaction?

Judge NIXON. I said, "Well, fine. Tell them to come by"— I gave them a time that afternoon.

Mr. STEWART. Did he tell you that you were going to be interviewed in connection with possibly being a subject of an investigation yourself?

Judge NIXON. No.

Mr. STEWART. Had you met with FBI agents on a variety of matters before that?

Judge NIXON. Yes. And every time the FBI would come down on their inspection tours from Washington, they would come by and talk to me and check on everything in the district. The FBI agents from Washington.

Mr. STEWART. Did you then receive visitors later that day?

Judge NIXON. Yes.

Mr. STEWART. How did they come to see you?

Judge NIXON. What do you mean, "how did they come to see me"?

Mr. STEWART. How were they introduced to you?

Judge NIXON. Well, my secretary buzzed me on the intercom and said they were there, and I told her to send them in.

Mr. STEWART. And who did you meet at that time?

Judge NIXON. I met Mr. Reid Weingarten and Mr. Ken Whitespunner, whom I think I had somewhere along the line had run across, or possibly known casually, of the FBI, who was stationed down in our district. I didn't know him nearly as well as I did the agent-in-charge, and other agents in that area.

Mr. STEWART. All right. So Mr. Whitespunner was an FBI agent in Mississippi?

Judge NIXON. Yes.

Mr. STEWART. And Mr. Weingarten was from Washington?

Judge NIXON. That's correct.

Mr. STEWART. All right. Now much of that interview was tape recorded, and the transcript of that tape recording appears at Tab 22 of the subcommittee's materials. But before I get into that, I wanted to ask you if there was any conversation between you and Mr. Weingarten and Mr. Whitespunner before that tape machine was turned on?

Judge NIXON. Yes. There was a brief conversation.

Mr. STEWART. And what was the substance of that?

Judge NIXON. Well, Mr. Weingarten stated something to the effect that they were down looking into the question of an investment that I had made with Mr. Wiley Fairchild, which they thought was possibly an imbalanced investment in oil and gas, and the handling of his son's drug-smuggling case at the Federal level in Mississippi. And whether there was any connection between the two.

Mr. STEWART. The connection between the handling of the case by Federal authorities and your investment?

Judge NIXON. Yes.

Mr. STEWART. Why did you consent to proceed with that interview and allow it to be tape recorded?

Judge NIXON. I had nothing to hide.

Mr. STEWART. Now in the early questioning that appears in the transcript—and it appears at pages 6 and 9—you refer to the investment as unorthodox. You said there was something unorthodox about it——

Judge NIXON. Yes.

Mr. STEWART. —but you couldn't remember what. What did you mean when you used that word?

Judge NIXON. You mean what did I——

Mr. STEWART. At that time.

Judge NIXON. At that time I knew there was something unusual about it, out of the ordinary, and I couldn't think of what it was. I was just getting hit cold on that matter.

Mr. STEWART. You had basically no notice that they were going to ask you about the Fairchild investment?

Judge NIXON. No. This was approximately 3 years later, after it was formalized.

Mr. STEWART. Did you recall, at that moment, all of the details about the investment that you've testified about here today?

Judge NIXON. No.

Mr. STEWART. You have had to reconstruct some of those matters, is that fair?

Judge NIXON. Yes.

Mr. STEWART. All right. Now, did you later determine what you had meant, and what was nagging at you, in your own mind, as to how it was unorthodox?

Judge NIXON. Yes. I did.

Mr. STEWART. And what was that?

Judge NIXON. That the deeds had been dated back to—or the conveyances had been dated back to conform with the time of the gentlemen's oral agreement reached by Wiley Fairchild and myself, and also the fact that I did not receive royalty interests until a good while after the wells had apparently begun to produce.

Mr. STEWART. You mean you did not actually receive the payments?

Judge NIXON. Yes. Receive payments.

Mr. STEWART. Now, it also appears in the transcript, that when Mr. Weingarten explains to you that Drew's case had been involved at the Federal level, or that Federal authorities had been involved, you said that was the first you had ever heard of that. Now why did you say that?

Judge NIXON. Because it was. I never handled any aspect of that case, to my knowledge, and it turns out that's correct, and some of the defendants apparently had been sentenced in Federal court by Judge Cox. Some of the—those involved in that drug caper, or whatever you want to call it, at the Hattiesburg Airport.

Mr. STEWART. All right. The other conspirators evidently had been handled by the Federal authorities, is what he told you then?

Judge NIXON. Yes.

Mr. STEWART. All right. I wanted to ask you about a passage that appears in a report by the FBI that apparently was written by agent Whitespunner who was there with you on that day.

It appears at Tab N-9. I am going to read you the passage I care about.

Judge NIXON. N-9?

Mr. STEWART. N-9.

Judge NIXON. All right.

Mr. STEWART. It is in the materials we provided to the subcommittee.

The date of the interview is April 11th, which is just eight days before they come to see you, and it is a report of an interview—I think I said—with Mr. Wiley Fairchild.

It says: "Fairchild was advised that FBI investigation had left unanswered one or more crucial questions, specifically as to why the Office of the United States Attorney had turned over the prosecution of Drew Fairchild, and subject Watkins, in the narcotics case, to Forrest County District Attorney Bud Holmes, when the U.S. Attorney's Office appeared to have mainly handled the entire case satisfactorily through the Federal court system."

Let me read this next sentence, too. "Fairchild was advised that this point alone strongly implied that some pressure or other influence had been applied on unidentified parties in the Federal sector to turn the case over to local authorities."

Now, was that, in substance, what you understood they were investigating when they came to see you as well?

Judge NIXON. Yes.

Mr. STEWART. Did this focus on the Federal aspect of the case, how the case had been handled by Federal authorities—did that seem potentially significant to you, personally, as you sat therein the interview?

Judge NIXON. Absolutely.

Mr. STEWART. Why was that?

Judge NIXON. Well, because I was a Federal judge, and I knew that if they were investigating me, or questioning me with respect to this matter, it had to involve some official act on my part to constitute any kind of a Federal crime. And that's why.

Mr. STEWART. So you figured that it was the Federal aspect of the case that they were most concerned about with respect to you?

Judge NIXON. Absolutely. I thought that's the only part that would really concern me, as far as my investigation, any possible Federal crime that had been committed, because it must be an official act in that type matter, as I understood the law, and understand it now.

Mr. STEWART. And you are referring to the gratuity statute?

Judge NIXON. The gratuity statute, yes——

Mr. STEWART. And bribery?

Judge NIXON. —which is called the bribery statute. Yes.

Mr. STEWART. Now at the time you gave that interview with Mr. Weingarten—and this is April of 1984—were you aware, at some level, that you had had this previous conversation you have described in March of 1983 with Mr. Fairchild concerning his blackmail allegation?

Judge NIXON. Well, of course I knew it had occurred. It was, I am sure, in my recollect, but it wasn't foremost of course in my mind.

Mr. STEWART. All right. I want to ask about a couple of statements that you made during that interview.

Judge NIXON. For the reasons I've previously stated.

Mr. STEWART. I understand. Turning to page 19—and I will read you the passage also, and this is a conversation so the statements are not all perfectly formed sentences.

You stated, towards the bottom of the page: "Of course anything to do with his son's case—this is Mr. Fairchild's son's case—"absolutely had nothing whatsoever because I don't—I'm not even aware of really what that's about. I think I read something in the paper one time about it since then."

You said, further on: "If you can detect or know of anything at all, where I ever had any connection with his son's case, or the disposition of it, or handling of it, or anything to do with it, I sure wish you'd tell me."

And then, on page 20, after being interrupted a couple of times you said: "There has been—because there has been nothing."

Now were those accurate statements by you?

Judge Nixon. Yes. Absolutely.

Mr. Stewart. And why did you consider those accurate statements?

Judge Nixon. Because I had nothing to do with it, whatsoever. I knew they were investigating—as far as I was concerned—any official act that had performed, and I assumed that it was addressed to the handling of it on the Federal level because that's the only level on which I could have performed any kind of official act.

Mr. Stewart. All right. Judge Nixon, I wanted to move on to page 28. You were asked the question with respect to Bud Holmes: "Has he ever discussed any cases with you while he was DA?" And you answered: "What kind of cases?"

And the question goes on: "His cases, the criminal cases in his court." And you replied: "I think a few murder cases we discussed."

Do you recall, even today, murder cases that you did discuss with Mr. Holmes?

Judge Nixon. Yes, and one in particular, that involved the murder of his daughter's roommate in Hattiesburg by a drifter.

Mr. Stewart. And when Mr. Holmes would discuss these cases with you, what was the nature of the conversation?

Judge Nixon. He would discuss the case. He would tell me about what happened in the case, and could tell me about the happening, of the evidence that they found, the witnesses, and what happened, and how they were disposed of, and what have you.

Mr. Stewart. Would he describe to you various triumphs or ploys he had achieved?

Judge Nixon. Yes.

Mr. Stewart. Now, you then say in this interview—that you are asked: "Did Mr. Holmes ever discuss the Drew Fairchild drug case with you?" and you replied not to your recollection.

Was that true?

Judge Nixon. Yes.

Mr. Stewart. And why did you say that?

Judge Nixon. Because he didn't. He wanted to, and that's when I stopped him and told him I didn't want to hear about it.

Mr. Stewart. So when you said he hadn't discussed it with you, at least in retrospect, a part of your reason for saying that is that he attempted to and you said you didn't want to hear it?

Judge Nixon. Yes.

Mr. Stewart. All right. Now would there have been anything wrong in your hearing about it?

Judge Nixon. No, nothing whatsoever, but I didn't have all night to stay there and listen to him. I had to drive home.

Mr. Stewart. At page 31 of that transcript, the question is asked: "You've had no connection, no knowledge of it, no participation in the Drew Fairchild case?" And you responded, "Absolutely, except something I read in the paper."

Do you consider that, even today, to be an absolutely accurate statement?

Judge NIXON. Yes. I do, for the reasons previously stated. See, Mr. Weingarten kept coming back to why the case wasn't prosecuted in Federal court, and asked me about whether the U.S. Attorney or his assistant had been involved in any way, or talked to me about the case, and interested in how it was, quote, "steered" from Federal to State court. And of course I knew in addition to that—I thought that was the focus of his investigation, certainly as it related to me plus the fact that I knew what the law was with respect to a gratuity violation.

It had to be an official act by a Federal judge to constitute such.

Mr. STEWART. Judge, I skipped over this and I meant to ask you about it.

At page 10 of the transcript, Mr. Weingarten makes a reference to the fact that he had prosecuted Congressman George Hanson.

Judge NIXON. Yes.

Mr. STEWART. What did you understand him to be saying when he made that reference?

Judge NIXON. I really thought he was trying to intimidate me, and he was very braggadocio about that. He looked like he took a great deal of pride in the fact that he had convicted Congressman Hanson. I think he said on a financial disclosure matter, his wife, on his financial return.

Mr. STEWART. Let me ask you about page 37. The statement is made there, up at the top, by you—and I am trying to read over some of the "uh's" and the "well's."

"All I know is nothing was done or nothing was ever mentioned about Wiley Fairchild's son, and I defy anybody to—and I say defy—I don't mean"—there's a blank—"but I challenge anybody to show any connection or anything I've ever done in connection with Wiley Fairchild's son's case. I certainly would"—there's a blank—"to begin with, and if I even suspected something like that was going on, I certainly wouldn't have invested or have any dealings. Absolutely."

Was that an accurate statement?

Judge NIXON. Yes, it was, and is.

Mr. STEWART. I want to ask, now, Judge Nixon, about—well, to borrow the Sherlock Holmes phrase and the story about the dog that did not bark—I want to ask about the question that was not asked.

Were you ever asked a question about Mr. Fairchild's blackmail allegation?

Judge NIXON. No.

Mr. STEWART. I wanted to bring to your attention—it is in Tab N-8 of the materials we provided to the subcommittee—another memorandum of an interview with Mr. Fairchild. This is dated April 10th, so this is nine days before Mr. Whitespunner came to see you with Mr. Weingarten.

Judge NIXON. What I have is—I'm sorry. At the bottom it's April 10th.

Mr. STEWART. Yes.

Judge NIXON. At the top it's transcribed on the 11th.

Mr. STEWART. Right.

Judge NIXON. OK.

Mr. STEWART. So Mr. Whitespunner, who was also at your later interview, writes there, right at the top: "Mr. Fairchild was advised of the identities of the interviewing agents, and further, that a friend of Fairchild's, a John Baltar, had reported that Fairchild had information indicating he was being extorted or blackmailed by unidentified persons."

Now, were you asked any questions about this allegation that Mr. Whitespunner had mentioned to Mr. Fairchild just nine days earlier?

Judge NIXON. Not only was I not asked at any time about that, but they didn't see fit to ever inform me that such an allegation had ever been made to the FBI.

Mr. STEWART. Do you have any idea why those questions were never raised about the blackmail allegations?

Judge NIXON. No, I don't, unless they were of the same opinion I was, that it was a lot of nonsense.

Mr. STEWART. Now, at the end of the conversation, after the tape was turned off—and now I am back on April 19 when you are in your office with Mr. Whitespunner and Mr. Weingarten—did you talk to Mr. Weingarten about calling Carroll Ingram or U.S. Attorney George Phillips in Jackson, or Bud Holmes?

Judge NIXON. I told him very specifically, that I was going to call all three of them.

Mr. STEWART. And why did you tell him that?

Judge NIXON. Because I didn't want him to think I was going around behind his back to try to get somebody to do something wrong or try to cover up anything. I wanted him to know, up front, that I was disturbed about this, I was mad about it, outraged about it, didn't know what it was all about, and was going to call them and see if I could find out something myself.

Mr. STEWART. Has he ever confirmed to you, on record, and on transcript, that you did in fact tell him that?

Judge NIXON. Yes. He tried to imply during the trial that I did this surreptitiously, and in the transcript, I made him admit that I finally, reluctantly, that I had told him I was going to do that before he left my office, and he's admitted that in the trial transcript.

Mr. STEWART. Now why did you want to talk to those three people?

Judge NIXON. Because I wanted to find out what was going on, what this was all about. I was—pardon the expression—I was mad as hell, Mr. Stewart, and outraged about it, and still am.

Mr. STEWART. I can understand.

Judge NIXON. I'm sorry.

Mr. STEWART. Now, I want to move on, then, to those phone calls. Did you make those calls that day?

Judge NIXON. Yes, sir. I did. That night I think it was, or that evening.

Mr. STEWART. Did you reach Mr. Phillips?

Judge NIXON. Yes. I did.

Mr. STEWART. And what did you tell him?

Judge NIXON. I said, George—I told him what happened, that they had been there, who they were. He knew of course Whitespunner I'm sure, and I don't know whether he knew Weingarten or not. Mr. Weingarten. But I told him, and I said what's going on George? What's this about? And he said, Judge, I don't know a thing about it.

Mr. STEWART. Did you speak with Mr. Ingram?

Judge NIXON. Yes. I did.

Mr. STEWART. And did you tell him roughly the same thing?

Judge NIXON. Yes, and among other things, I said, Carroll, what is there about this? They were asking me about those conveyances that you brought down there, and asking me about the dating—or the date the year before, a year before we executed them.

He said, well, Judge, don't you remember that you asked about that and I told you were they were dated back to conform with the date of the oral agreement which was customary? I said, oh, yeah, now certainly, I remember that.

Mr. STEWART. Now did Mr. Ingram know anything further about the investigation?

Judge NIXON. No, he didn't. He said he hadn't heard anything about it.

Mr. STEWART. All right. Now did you talk to Bud Holmes at that time, that evening?

Judge NIXON. Yes. I did. Yes.

Mr. STEWART. And what did you tell Mr. Holmes?

Judge NIXON. I told him basically the same thing that I told him, except I didn't of course talk about any conveyances. He wasn't any party to any of that.

Mr. STEWART. Now what was his reaction?

Judge NIXON. Well, he said he didn't know a thing about it but if the s.o.b.'s were down there criticizing him, or looking into his affairs, they could just go on back to Washington.

He was going to handle things the way he wanted to. He was the district attorney down there, and if they wanted to run things, come on down and be elected, or something to that effect.

Mr. STEWART. All right. Now did you tell all three of these people that you really did not know what this was all about?

Judge NIXON. Yes. I did.

Mr. STEWART. Were you trying to give a message to any of those people, that you wanted them to dummy up, or to conceal something you had done before, like that phone call?

Judge NIXON. Of course not. I wish I could have found out from them what this was about at that time. They didn't know, either.

Mr. STEWART. Did you even mention the phone call with any of those three people, or specifically Mr. Holmes?

Judge NIXON. Of course not.

Mr. STEWART. Did he mention the phone call to you?

Judge NIXON. No.

Mr. STEWART. Do you have any idea how Mr. Holmes could have formed the conclusion, based upon that lack of comment, that you wanted him to conceal the phone call?

Judge NIXON. No. I don't.

Mr. **Stewart**. I'm probably beating a dead horse here, but at that time, in that conversation, did you know that Mr. Holmes had indicted Drew Fairchild to collect a State court fee?

Judge **Nixon**. I should say I did not.

Mr. **Stewart**. So if he had his own reasons, at that time, for not wanting to disclose that phone call, and those blackmail allegations that you had passed on to him, he did not tell you about them?

Judge **Nixon**. Absolutely not.

Mr. **Stewart**. Did you ask Mr. Holmes in that conversation to check to see if Mr. Fairchild had tape recorded the phone call from the farm?

Judge **Nixon**. No. I didn't do any such thing.

Mr. **Stewart**. Have you ever made that request to Mr. Holmes?

Judge **Nixon**. Absolutely not.

Mr. **Stewart**. Mr. Chairman, I was watching the clock. If this is a good time for you, this is not a bad breaking point for us. I am happy to proceed, though.

Mr. **Edwards**. You could proceed, Mr. Stewart, for about 15 minutes. The hearing has been delayed, and I will let you know.

Mr. **Stewart**. Be delighted.

Let me go back to that interview that you had in April of 1984, just for a second. Slide back a couple of hours. Now we have covered that you were not asked about those allegations of blackmail that Mr. Fairchild had made to you.

I take it you did not volunteer to the investigators that you had heard those allegations from Mr. Fairchild?

Judge **Nixon**. No. I didn't.

Mr. **Stewart**. Why not?

Judge **Nixon**. Well, first of all, of course as you say, I was not asked about it. I thought it was a lot of nonsense to begin with. I thought it was a misunderstanding. That night, apparently, it turned out that it had been a misunderstanding, and as a result of Holmes' call to Fairchild, apparently the misunderstanding had been resolved because Mr. Fairchild said he was satisfied, and I heard nothing more about the matter after that, and I think it would have been irresponsible, to say the least, for me to go around blabbing about something that didn't amount to anything, especially something like a blackmail charge.

Mr. **Stewart**. Well, when you say "especially something like a blackmail charge," what do you mean?

Judge **Nixon**. Well, that's a serious charge, and against somebody that was completely, in my judgment, unfounded, and I really—as I understood blackmail from Mr. Fairchild, when he stated it in his office, that meant dragging his case through the mud by the news media. His son's case, I mean.

Mr. **Stewart**. Did you ever have any idea what, precisely, he meant by "blackmailing" or "money" or anything like that?

Judge **Nixon**. No. I never, I never have. Until I later learned about—much later learned about Bud Holmes indicting Drew Fairchild to help collect a fee for Bill Porter.

Mr. **Stewart**. And just as you did not volunteer——

Judge **Nixon**. I don't know whether that constituted blackmail. Don't misunderstand me. I'm not saying it did, and I'm not sure about that. But no.

Mr. **Stewart**. But just the same as you did not volunteer that information, they didn't volunteer it to you either?

Judge **Nixon**. They never disclosed to me that Mr. Fairchild had made that complaint to the FBI, and several days before they interviewed me. If they had, I'm sure—and had asked me about it—I would certainly have told them, because I didn't think there was anything at all to it, and I thought it was resolved, and I thought it would be irresponsible for me to bring up such a matter as that, that I didn't think ever amounted to anything, and apparently hadn't.

Mr. **Stewart**. I want to move on three months, when you went to the grand jury in July of 1984. Was that the first sitting of that grand jury?

Judge **Nixon**. Yes.

Mr. **Stewart**. I would like to take a second to try to let you set the stage for what it was like for you in South Mississippi, for those three months, between the interview in April and the grand jury appearance in July.

Judge **Nixon**. For lack of a better term, Mr. Stewart it was pure hell for me, and my family.

Mr. **Stewart**. Just take your time.

Judge **Nixon**. The news media beat us to death. Somebody was leaking things. Somebody apparently connected with the investigation leaking all kinds of stuff. Every time you looked on TV, there were these deeds of conveyance to mineral interests being flashed on, my name, my picture, telling—just disparaging stuff. And just completely accusatory.

There was even an editorial in a paper in Meridian, very early in the stages, that I was going to be indicted and convicted, and sentenced for bribery and stuff like that. It was unbelievable.

Mr. **Stewart**. When the grand jury was convened——

Judge **Nixon**. Newspaper headlines every day, something new, accusatory of me. I was tried and convicted——

Mr. **Stewart**. Let's just take a second.

Judge **Nixon**. —in the news media before the grand jury even convened.

Mr. **Stewart**. OK.

Judge **Nixon**. I'm sorry.

Mr. **Stewart**. I know you've been waiting for this for a long time.

Judge **Nixon**. I'm not normally an emotional person, but——

Mr. **Stewart**. OK. Did you volunteer to appear before the grand jury?

Judge **Nixon**. Yes. I asked my attorney, Bill Goodman, to contact the Justice Department, and ask them for permission for me to appear before the grand jury.

Mr. **Stewart**. Why did you do that?

Judge **Nixon**. Because of all this adverse publicity that was so false and because I wasn't guilty of anything, and I wanted the opportunity to tell the grand jury that and clear this matter up, and get it over with and behind us.

My children would come home from school, talk about things that other kids had said to them about their daddy, and all this kind of stuff.

Mr. STEWART. OK. Judge Nixon, let's take a second, please. Mr. Chairman——

Judge NIXON. I'm sorry, Mr. Chairman, and members. I'm very sorry.

Mr. EDWARDS. Would you like to do the recess at this time, Mr. Stewart?

Mr. STEWART. I think it might be best.

Mr. EDWARDS. All right. We will recess until 2:00 o'clock, and then we will continue with your interrogation.

Mr. STEWART. Thank you very much.

[Luncheon recess.]

Mr. EDWARDS. The subcommittee will come to order. Mr. Stewart, Judge Nixon, you may proceed.

Mr. STEWART. Thank you, Mr. Chairman.

Judge Nixon, when we broke, we were just covering the time you appeared before the grand jury in July of 1985—1984. Excuse me. I wanted to cover a small point, first. You mentioned that you had conferred with your attorney, Mr. Goodman, before you went to the grand jury.

Did he report to you, at some point, that he had made a discovery concerning the interest payments you had made to Mr. Fairchild in connection with the notes?

Judge NIXON. Yes. He did.

Mr. STEWART. And what was the substance of what he told you?

Judge NIXON. He told me that he discovered that they were charging interest from 1981 instead of 1980.

Mr. STEWART. All right. Was that the first you had heard of that?

Judge NIXON. Yes. It was.

Mr. STEWART. Now did you tell the grand jury about that? I can direct your attention, actually, to page 19 of your grand jury testimony.

Judge NIXON. I'm sure I did.

Mr. STEWART. On page 19, you stated: "I thought I had paid interest on that until I just reconstructed all this recently."

Then, going on: "I apparently was not charged interest back to 1980. I was apparently just charged back to the date of the actual delivery of the instruments, whenever they were actually delivered to me in 1981."

And that is what you told the grand jury then?

Judge NIXON. Yes.

Mr. STEWART. You were not making a big secret out of that, were you?

Judge NIXON. No.

Mr. STEWART. Now I want to ask about a couple of passages in this grand jury transcript. At pages 14 and 15, you were being asked about the time when the transaction with Mr. Fairchild had been completed.

You stated: "I don't want to say anything positively that's not true. I can just try to reconstruct, give you the best of my recollection. My memory is not that good to reach back 4 years ago and come up with the exact time of the exact instance."

Is that pretty much the construction process you have described here today?

Judge NIXON. Yes. It is.

Mr. STEWART. All right. Now, when you were reconstructing these events, before you went into the grand jury, did you make a special effort to reconstruct the allegations concerning blackmail that Mr. Fairchild had made?

Judge NIXON. No. I didn't.

Mr. STEWART. Now we know that the Government was aware of Mr. Fairchild's blackmail allegations at the time you appeared in the grand jury. Were you asked any questions about them while you were in the grand jury?

Judge NIXON. No.

Mr. STEWART. Let me ask you about the question and answer at pages 47 and 48. The prosecutor is questioning you. Most of the questioning was done by Mr. Weingarten, is that right?

Judge NIXON. Yes.

Mr. STEWART. And he asked you about Mr. Holmes, and the question is asked: "Did he ever discuss the Drew Fairchild case with you?"—"he" being Mr. Holmes—and your answer was: "No, not to the best of my recollection. I think I would recall if he had."

Was that an accurate answer?

Judge NIXON. Yes. It was.

Mr. STEWART. And do you say that after everything that has happened in this case? Everything that has happened to you for the last 4 years?

Judge NIXON. Yes.

Mr. STEWART. At page 50 of the testimony you were asked if Mr. Wiley Fairchild ever discussed the case with you, and you answered: "No, not to the best of my recollection. I think I would recall if he had."

And further on you were asked if Wiley Fairchild ever asked you to do anything vis-a-vis his son's case and you answered, "Absolutely not."

I would ask the same question. After everything that has happened in this case, everything that has happened to you in the last 4 years, do you still answer that question the same way?

Judge NIXON. Yes.

Mr. STEWART. At page 75 of the transcript, the initial questioning ended and you were asked if you had anything to add, and you made an extended statement.

Was part of that statement prepared?

Judge NIXON. Yes. It was.

Mr. STEWART. Why had you intended to make those remarks?

Judge NIXON. Because of the flood of adverse publicity about all of this, and the fact that I knew I was not guilty of anything, and I wanted to tell the grand jury about that.

Mr. STEWART. All right. Were you concerned about the impact on the reputations of the courts in Mississippi of this investigation?

Judge NIXON. Very much so.

Mr. STEWART. Let me ask you about some specific passages. I am sure you have thought about them before. On page 76, you stated: "Now, I have had nothing whatsoever, officially or unofficially to do with the Drew Fairchild criminal case in Federal court or State court. I don't need to reconstruct anything with reference to that."

Is that an accurate statement?

Judge NIXON. Yes. It is.

Mr. STEWART. In the next passage you stated: "I have never talked to anyone about the case, any Federal or State judge, Federal prosecutor or State prosecutor, and I never handled any aspect of this case in Federal court."

Is that statement accurate?

Judge NIXON. Yes. It is.

Mr. STEWART. Now in retrospect, thinking in terms of your conversation or exchange with Bud Holmes at his farm that night, do you still consider that to be accurate?

Judge NIXON. Yes. I do.

Mr. STEWART. You then go on to say: "As you said, Judge Cox handled it. I don't know where—someone told me maybe Judge Russell handled one of the defendants also and—but I never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal prosecutor or judge, in any way influenced anyone, anybody with respect to this case."

After everything that has happened to you over the last 4 years, do you still consider that to be a true statement?

Judge NIXON. Absolutely.

Mr. STEWART. There are just a couple other passages I wanted to ask you about.

At page 79, you are about to be excused to leave the room while the grand jurors spoke with the prosecutors, and you made the statement: "Before I go, I would like to ask anyone on this grand jury if there is any question they would like to ask me with reference to the Drew Fairchild case because I'll be glad to answer it."

Did you mean that when you said it?

Judge NIXON. Certainly I meant it. I wouldn't have said it otherwise.

Mr. STEWART. And why did you say it?

Judge NIXON. Well, I said it because I had nothing in the world to hide, and I would welcome any inquiry about it.

Mr. STEWART. Then finally, with respect to this transcript, I wanted to ask about a passage at page 96. It is at the very end of your testimony when you have come back into the grand jury room, and you state: "I've already answered your question. I thought this was an investigation of the handling of the Drew Fairchild case, which would be the only possible charge of a crime herein, Federal crime, and I think I've answered that to your—the questioner says OK.

And the answer: "Unequivocally, I had nothing to do with that."

What were you saying there?

Judge NIXON. Well, I was saying exactly what I've already said. That the only thing that I could have had to do with it that would constitute a crime, or that would be the focus of that investigation as I saw it and understood it, not only from the status of the law but what had been said to me by Mr. Weingarten, was whether I had anything official to do with that case at all on the Federal level.

Mr. STEWART. And you also understood that there was some question concerning whether there was a connection between your investment and that case, is that correct?

Judge NIXON. Oh, absolutely.

Mr. **Stewart**. All right.

Judge **Nixon**. And how it was—why it wasn't prosecuted in Federal court and how it was steered—quote—"steered" to State court.

Mr. **Stewart**. Now after your grand jury appearance, did you pay additional interest on those notes from Mr. Fairchild?

Judge **Nixon**. Yes. I did.

Mr. **Stewart**. And how did that come about?

Judge **Nixon**. I got a letter in the mail from Mr. Riley, of Fairchild—Mr. Fairchild's office—I think he was his bookkeeper—saying that it had come to their attention as a result—I don't know whether he said as a result of the grand jury, or exactly what—that they had been charging me interest only from 1981 instead of 1980, and he made a demand for the additional interest.

And I immediately called my attorney, Bill Goodman, and told him that letter had come. He said, well, the first thing we need to do is inform Reid Weingarten so it doesn't look like something's up, something surreptitious of any kind.

So that's the first thing. He wrote a letter to—I think he—I know he called him or wrote a letter, or both, to him, to tell him about that demand, and we computed it and found out they were overcharging us for the interest.

Mr. **Stewart**. Did you pay the correct amount?

Judge **Nixon**. I paid the correct amount, $900 and some-odd.

Mr. **Stewart**. Did you have any objection to paying that interest?

Judge **Nixon**. No.

Mr. **Stewart**. Now after you appeared in the grand jury did you disclose your testimony to Bud Holmes, or to Wiley Fairchild, or Carroll Ingram, or anyone connected with the case?

Judge **Nixon**. No.

Mr. **Stewart**. You referred before the luncheon recess to publicity that did occur concerning the grand jury investigation. Was a gag order ultimately entered in connection with that problem, with leaks from the grand jury in the investigation?

Judge **Nixon**. Yes. The U.S. District Judge from the Middle District of Louisiana, who was presiding over the grand jury, did issue a gag order to stop all of this. And then his order—opinion said he thought he had been remiss in not doing it originally, based on what was brought to his attention, but nevertheless, he was doing it at that time to prevent any further leaks of that kind, and publicity.

Mr. **Stewart**. Did that stop the leaks?

Judge **Nixon**. No. It didn't. Not completely.

Mr. **Stewart**. And it did not stop the publicity anyway?

Judge **Nixon**. No, certainly not. That much I know. Now the leaks, I assume it didn't, because there was a lot more publicity and a lot more things that came out. I don't know.

Mr. **Stewart**. Judge Nixon, I wanted to move on to the point when you met with—well, let me ask: Do you recall meeting with Mr. Holmes in February of 1985?

Judge **Nixon**. Yes.

Mr. **Stewart**. How did that meeting come to pass?

Judge NIXON. I was trying a products liability case in Hattiesburg, a jury case, and this was at night, and it went into the night, a long case. And it was quite late at night.

And when the jury went out and I came into my chambers, the jury was deliberating and my secretary told me Bud Holmes had called on the phone, and that it was very important that he talk to me and asked if I would call him.

So I called him, and he said he had something very important to talk to me about. I said, well, come on over, I'm up here in chambers and I'll be here a while. The jury's out deliberating.

He said I'd rather not come up there. I said well, why not? He said I'd just rather not. I don't want to talk much on the telephone. I says, well, I'm up here, Bud. He said, well—I said the lawyers are waiting and the jury's out deliberating.

He said, well, who are the lawyers in the case, and I mentioned them, and one of them was named Frank Montague. When I mentioned his name he said I know darn well I'm not coming up there now.

Mr. STEWART. Did you have any reason to understand Mr. Holmes's feelings about Frank Montague?

Judge NIXON. Yes. I think it would be an understatement to say he didn't like him at all because Frank Montague, among other things, had represented Bud Holmes' wife in a divorce case, a pretty—well.

Mr. STEWART. Did you meet with Mr. Holmes, as he had requested?

Judge NIXON. Yes. He asked me to meet him downstairs where I parked my automobile in a reserved place, right outside the door of the courthouse.

Mr. STEWART. All right. And you did meet with him there?

Judge NIXON. Yes.

Mr. STEWART. What did you talk about?

Judge NIXON. He was quite upset. He said I've testified before the grand jury that I didn't talk to Wiley Fairchild about his son's case, and Carroll Ingram has told them that—about the telephone call that I made from my farm to him that night you were out there.

And he said, now no call was made, was it? I said certainly a call was made, Bud, and you know you made it. I said there was nothing wrong with the call at all, as far as I know. I don't know what you told him on the phone, but certainly, the call was made, and if I'm asked about it I'm certainly going to tell them.

Well, he was quite upset and mad. He tried to dissuade me, or persuade me again, that no call was made, and I more or less reiterated that, and he said, well, I don't know what I'm going to do, and left.

Mr. STEWART. Did Mr. Holmes tell you that he had visited Mr. Ingram on two occasions, and on the second occasion he had encouraged Mr. Ingram to decide that he did not remember the call?

Judge NIXON. No.

Mr. STEWART. In any event, did you form an impression that perhaps Mr. Holmes was attempting to see if you would deny the call?

Judge NIXON. Definitely.

Mr. STEWART. Did you have a conversation with your attorney about your exchange with Mr. Holmes on that occasion?

Judge NIXON. Yes.

Mr. STEWART. And was any action decided upon between you to take as a result of Mr. Holmes visit to you?

Judge NIXON. My attorney was going to inform Mr. Holmes' attorney to the same effect that I had informed Mr. Holmes.

Mr. STEWART. And that was to the effect that you would confirm that the call had occurred, and that he had made it?

Judge NIXON. Yes.

Mr. STEWART. Did you do that so Mr. Holmes would be under no misunderstanding that you were going to affirm that the call had occurred?

Judge NIXON. Yes.

Mr. STEWART. Judge Nixon, I want to ask you to listen to the testimony Mr. Holmes gave just a few days after he met with you. This is his grand jury appearance on February 21 of 1985, at page 41.

Judge NIXON. Where is that? Is that one of the exhibits?

Mr. STEWART. It is not in front of you.

Judge NIXON. All right.

Mr. STEWART. Let me just read this to you.

The question is asked of Mr. Holmes: "Have you discussed this with Judge Nixon?" The answer was given, "Yes."

Question: "What's his recollection of the call?" They are asking about the phone call to the farm.

The answer is made: "He said that I called him. He said that I got telephonitis, that I called him. I said, 'Judge, I just don't remember calling, you know.'"

Question: "You got telephonitis?" Answer: "That was his exact words. He said, 'You got telephonitis.' He said that we were sitting there and I called him, but I don't remember calling him. I just don't."

So there, Mr. Holmes is testifying to the grand jury that you have confirmed to him that the call occurred and that he made the call.

Is that testimony by Mr. Holmes an accurate description of your conversation with him just a few days earlier?

Judge NIXON. Yes.

Mr. STEWART. Do you have any idea why Mr. Holmes, after he made his plea agreement with the Government, repudiated that testimony, and said what he had really been doing, was that you had denied the call and he had been trying to persuade you to confirm that the call had occurred?

Judge NIXON. Mr. Stewart, I've thought about that long and hard, and I—it's hard to realize that he did that.

Mr. STEWART. When you learned from Mr. Holmes that the prosecutors had been asking about the phone call, did you have any reason to think that the phone call was not going to be confirmed to them, that they would not know that the phone call had occurred?

Judge NIXON. I'm sorry. I didn't hear your question.

Mr. STEWART. When you learned from Mr. Holmes they had been asking about the phone call, the investigators had—that Carroll

Ingram had confirmed that it occurred, that Mr. Holmes expected to be asked about it—did you have any reason to think that the prosecutors did not know that there had been a phone call?

Judge NIXON. No.

Mr. STEWART. Did you think that they were totally in the dark on this subject and that you needed to enlighten them?

Judge NIXON. Absolutely not. They knew about the call then.

Mr. STEWART. All right. Did you talk to Mr. Holmes later on, after this occasion, about the phone call on any other occasion?

Judge NIXON. Yes, on—I think it was—it was the middle of April 1985. I was attending a reception for our retiring chief U.S. Deputy Marshal for the Southern District at a country club in Gulfport, and there were quite a few people there including FBI agents.

And I was standing in the middle of the floor talking to someone and Bud Holmes walked in. Well, he came over to me, and the minute this other person left he said, you know that phone call in question—EH said—that you said I made? He said I was drunk and you were sober.

Mr. STEWART. What was your response?

Judge NIXON. Before I could respond someone else walked up.

Mr. STEWART. Now, was this after he had been indicted?

Judge NIXON. Yes.

Mr. STEWART. And did you have any further exchange with him on this subject?

Judge NIXON. No.

Mr. STEWART. All right. Now I want to move to the point after you had been indicted in August of 1985, and then at your trial. You testified in your own behalf at that trial, didn't you?

Judge NIXON. Yes.

Mr. STEWART. Did you attempt to tell the truth at all times during that testimony?

Judge NIXON. Absolutely.

Mr. STEWART. Did you later discover that on one matter you had given inaccurate testimony?

Judge NIXON. Yes.

Mr. STEWART. That is with respect to your whereabouts on May 14th, 1982, isn't that correct?

Judge NIXON. That's correct.

Mr. STEWART. Just to lay the groundwork. You had testified that as far as you knew—and you were positive about it—that you had not been in Hattiesburg on that day, is that correct?

Judge NIXON. Yes. I honestly thought that.

Mr. STEWART. What was your basis for giving that testimony, if you can describe it?

Judge NIXON. Well, I knew I was preparing for the trial of a big asbestos case. I knew I was in Biloxi that morning hearing in limine motions, preparing to try the case, and I knew—I could think of no reason that I would have gone to Hattiesburg, except as I stated to the—and during my trial—I think it was on cross-examination—except possibly for the day for a doctor or dental appointment.

Mr. STEWART. There were dentists in Hattiesburg whom you did—who treated you?

Judge NIXON. Yes.

Mr. **Stewart**. All right. And did you make any efforts to determine whether you had actually visited those dentists?

Judge **Nixon**. Yes. Calls were made to Dr. Fayler's office, my periodontist who was treating me, who had been—I'd been referred to previously by Dr. York, the oral surgeon.

Mr. **Stewart**. Now your wife, Barbara, has testified about that here?

Judge **Nixon**. Yes. She did.

Mr. **Stewart**. All right. Now you mentioned Dr. York. Did you attempt to contact Dr. York?

Judge **Nixon**. No, and the reason we didn't is because Barbara had told me, between the times of my indictment and trial, that when she had her mother at Dr. York's for oral surgery, that he told her the FBI had come by and picked up all of my dental records.

Mr. **Stewart**. Why did that dissuade you from contacting Dr. York?

Judge **Nixon**. Well, we knew if they had my dental records that would show my presence there, they certainly would have disclosed that, and we assumed they would have, and of course the records weren't available there, in any event. As far as we knew they still had them.

Mr. **Stewart**. In your judgment, had you taken just the most diligent possible effort, steps you could to determine where you were?

Judge **Nixon**. Yes. We checked, as Barbara testified, with—she checked with the Montessori school to see if Courtney had any kind of exercise on that day, and we checked with various friends of mine who I might have passed through Hattiesburg with or gone to Hattiesburg with.

And we checked with my U.S. Magistrate who was sitting with me that morning in the in limine motions. We checked with my law clerk. We checked with my secretary, checked my calendar, and we had no notations or information at all, that would have shown me to be in Hattiesburg that day.

Mr. **Stewart**. When you gave that testimony, did you honestly believe that that is where you were?

Judge **Nixon**. I did.

Mr. **Stewart**. That you were not—I am sorry—in Hattiesburg?

Judge **Nixon**. I was not in Hattiesburg, yes.

Mr. **Stewart**. Now when did you discover that the Government had had Dr. York's records all along?

Judge **Nixon**. Well, at the time of the motion for new trial, a few months later, after my trial.

Mr. **Stewart**. And do you know of any reason, of your knowledge, as to why the Government did not produce those before then?

Judge **Nixon**. No. We made a motion before my trial for the production of all that type evidence, and they didn't produce those.

Mr. **Stewart**. Now at the close of the trial, how long did the jury deliberate?

Judge **Nixon**. I remember approximately 18 hours, Mr. Stewart.

Mr. **Stewart**. Do you recall—and that extended over two days, didn't it?

Judge **Nixon**. Yes.

Mr. Stewart. Now do you recall that the jury kept sending back notes to the judge reporting their problems in deliberation?

Judge Nixon. Yes. I do.

Mr. Stewart. And you recall that they reported deadlock at various times during their deliberations?

Judge Nixon. Yes.

Mr. Stewart. Judge Nixon, I want to ask you just a few questions now about the indictment itself, the charges against you. It is at Tab 37 of the subcommittee's exhibits.

Count one of the indictment is the gratuity count. When you were preparing for trial, and at trial, what was the relative importance, in your mind, and in the development of the case between this gratuity count and the other counts of the indictment, the perjury counts?

Judge Nixon. Well, the gratuity count of course was the corruption count. It was the count which charged a crime that was the focus of the entire investigation and gave rise, apparently, to my grand jury indictment and everything, because everything else that was charged came out of the grand jury appearance. The perjury counts.

Mr. Stewart. So the gratuity was—would it be fair to say that the gratuity was supposed to lay the basis for the motivation for the false statement charges?

Judge Nixon. Absolutely.

Mr. Stewart. Let me ask you about on the second page of the indictment in count one. It is paragraph number two. This is the allegation that, "The defendant unlawfully and knowingly did"—and I am reading over a few words—"agreed to receive things of value for himself, to wit, royalty interests in three wells from Wiley Fairchild, formed because of official acts to be performed by the defendant, Walter L. Nixon, Jr., in the future in matters of interest to Wiley Fairchild."

Is it true that you had accepted any mineral interests because of official acts that you were to perform in matters of interests to Wiley Fairchild?

Judge Nixon. No.

Mr. Stewart. Have you heard any evidence in this proceeding, before this subcommittee, that you were to perform any future official acts for Wiley Fairchild?

Judge Nixon. Not only have I heard none but all of the evidence is to the contrary.

Mr. Stewart. All right.

Judge Nixon. Moving on to the next paragraph, three paragraph, sub (b). It states: "The defendant, Walter L. Nixon, subsequent to the initial request referred to in the previous paragraph, frequently and persistently urged Carroll Ingram to see to it that the defendant, Walter L. Nixon, Jr., was placed in an oil and gas investment with Wiley Fairchild."

Did you think that was an accurate allegation?

Judge Nixon. No. It was not.

Mr. Stewart. You had contacted Mr. Ingram?

Judge Nixon. Sure. Yes.

Mr. Stewart. Had it been frequent and persistent?

Judge NIXON. No, and Carroll Ingram, as I recall, testified that it was not when he testified here before this subcommittee.

Mr. STEWART. In the following subparagraph, the assertion is made that: "The defendant, Walter L. Nixon, Jr., received mineral royalty interests from Wiley Fairchild worth far more than any consideration the defendant, Walter L. Nixon, Jr., agreed to pay for the interests."

Do you believe it was ever accurate, that you had received mineral interests worth far more than what you paid for them?

Judge NIXON. No.

Mr. STEWART. Have you heard any evidence in this proceeding, that anybody intended you to do that?

Judge NIXON. No.

Mr. STEWART. On the following page, in subparagraph (f), the statement is made there that: "The defendant, Walter L. Nixon, Jr., advised Wiley Fairchild after receiving the mineral royalty interests, that he would help Fairchild any time he could."

Did you ever tell Mr. Fairchild that you would help him any time you could?

Judge NIXON. No.

Mr. STEWART. They cut off the rest of what you told him, didn't they?

Judge NIXON. Yes.

Mr. STEWART. Did you think that was a fair and accurate way to treat someone?

Judge NIXON. Of course not.

Mr. STEWART. Count two on the next page. The assertion is made in the third paragraph, the paragraph numbered three, that the grand jury was investigating—it says at the end of the paragraph there: "(a) the circumstances of the transfer of mineral royalty interests from Wiley Fairchild to the defendant, Walter L. Nixon, Jr; and (b) the handling of the drug smuggling case involving Drew Fairchild by Paul H. "Bud" Holmes, then the district attorney for Mississippi's 12th Judicial District."

Based on what you understood at the time, and even understand still today, is that a complete statement as to what the investigation was about, what you were questioned about?

Judge NIXON. Yes, as it involved the—my official acts, or acts on the Federal level.

Mr. STEWART. Well, let me stop here for a second and let's talk about this for a second. Is there anything in there about your acts on a Federal level?

Judge NIXON. Well, on the fourth line it says something about official corruption.

Mr. STEWART. Well, I was reading (a) and (b).

Judge NIXON. Oh, (a) and (b). No.

Mr. STEWART. All right. Was there anything about a connection between those Federal activities and your investment with Wiley Fairchild?

Judge NIXON. No.

Mr. STEWART. Moving two pages ahead to the end of count two an assertion is made in paragraph six—it is numbered one there: "The defendant, Walter L. Nixon, Jr., had discussed Drew Fairchild's drug smuggling case with Wiley Fairchild."

Was that a true allegation?

Judge NIXON. No.

Mr. STEWART. Had Mr. Fairchild, at any point, tried to tell you about his son's case?

Judge NIXON. No.

Mr. STEWART. The statement numbered three states that: "Wiley Fairchild had asked the defendant, Walter L. Nixon, Jr., to help him with his son's drug case by influencing Paul H. "Bud" Holmes."

Was that accurate?

Judge NIXON. No. Of course not.

Mr. STEWART. Did Mr. Fairchild ask you to help Drew, or did he say that he did not care about what happened to Drew?

Judge NIXON. Well, I said and he said that he didn't ask me, and he did say that he didn't care what happened to him, as I related earlier.

Mr. STEWART. All right. Count three. I would like to direct your attention to the next page, paragraph three.

The statement at the end of that paragraph is that: "Bud Holmes and the defendant, Walter L. Nixon, Jr., had discussed Drew Fairchild's drug smuggling case."

Is that an accurate assertion?

Judge NIXON. No. It's not.

Mr. STEWART. All right. You have explained that several times. I am not going to go through it here.

Then in count four, the statement was made, all the way at the end: "That Walter L. Nixon, Jr. did have something to do with the Drew Fairchild drug case as he had sought to influence the case by asking State prosecutor Paul H. "Bud" Holmes to do what he could for Drew Fairchild and thereby handle the case in a way that would please Wiley Fairchild."

Did you, at any time, seek to influence the case by having Mr. Holmes do what he could for Drew Fairchild?

Judge NIXON. No.

Mr. STEWART. Judge Nixon, I know it has been a long time that you have been going through all this. I do want to ask, though: Do you think there is any basis—even in the position you are in—for those charges that were brought against you?

Judge NIXON. No, Mr. Stewart.

Mr. STEWART. Mr. Chairman, that concludes my questions.

Mr. EDWARDS. Thank you, Mr. Stewart. I am going to withhold the questions that I have until the end, and Mr. Sensenbrenner, do you have any questions?

Mr. SENSENBRENNER. Yes. I have some questions.

Judge Nixon, during your testimony this morning, you were asked a number of questions about the backdating of the deeds and your financial disclosure statements. Do you recall those questions?

Judge NIXON. Yes, sir.

Mr. SENSENBRENNER. Do you recall testifying, that under Mississippi law, when a document is backdated it is legally enforceable from the date stated on the document?

Judge NIXON. That's my understanding, Mr. Sensenbrenner. From the date that's on it.

Mr. SENSENBRENNER. And do you recall that the backdated deeds were delivered to you and you directed someone—whether it was Mr. Ingram or someone else—to record them in the public land records some time in February or March of 1981?

Judge NIXON. Yes, sir. It was in March, I'm pretty sure.

Mr. SENSENBRENNER. Was your financial disclosure statement for the calendar year 1980 prepared between that date and the time it was filed with the Office of Judicial Ethics?

Judge NIXON. I don't know. I can't tell you, independently, but I do know it was filed in May of 1982.

Mr. SENSENBRENNER. I am referring——

Judge NIXON. I mean 1980. Are you talking about the 1980——

Mr. SENSENBRENNER. I am talking about the 1980 financial disclosure statement. To refresh your recollection, please look at Tab 26 of the subcommittee's exhibit book.

Judge NIXON. All right.

Mr. SENSENBRENNER. And did you sign your 1980 financial disclosure statement on May 8th, 1981?

Judge NIXON. Yes.

Mr. SENSENBRENNER. So this was immediately, or within two months of the time that you received the backdated deeds, and directed them to be recorded?

Judge NIXON. That's correct.

Mr. SENSENBRENNER. And it is your understanding that this was a legally enforceable transaction as of February of 1980, the date stated on the deeds?

Judge NIXON. Well, it could have been, yes, if someone had tried to enforce it as of that date. Once it was signed.

Mr. SENSENBRENNER. And you did not disclose these royalty interests on your 1980 financial disclosure statement?

Judge NIXON. No. I disclosed them on the 1981 statement filed in 1982, for that year.

Mr. SENSENBRENNER. Even though you testified that your understanding of Mississippi law is that it was legally enforceable as of February of 1980, which was the date stated on the deeds?

Judge NIXON. It would have been—it could have been legally enforceable. I think it was really optional to disclose them either for 1980 or 1981, and I chose to disclose them for the year 1981, which I did on the form that I filed in May of 1982, which was two years before this investigation ever started. Yes, sir.

Mr. SENSENBRENNER. Well, is it your understanding that the transactions have to be reported as of the date that they are effective under the Ethics in Government Act?

Judge NIXON. The disclosure statement never became effective until it was signed by me in 1981. I mean the deeds. I'm sorry. I meant the deeds, the conveyances.

Mr. SENSENBRENNER. Even though it was——

Judge NIXON. But then they related back and could have been enforced from 1980. But if I had not signed them in 1981—and that's when they became legally enforceable under our statute for the first time—if they had not been signed in 1981, they would not have been legally enforceable in 1980.

Mr. SENSENBRENNER. Have you made a full and complete disclosure of all of your financial transactions for all of the years the Ethics in Government Act has been effective?

Judge NIXON. I hope I did, Mr. Sensenbrenner. I intended to.

Mr. SENSENBRENNER. Could it be that this transaction just slipped your mind in 1981, and you did not put it on your 1980 financial disclosure statement?

Judge NIXON. No, sir. It was effectuated legally in 1981.

Mr. SENSENBRENNER. But it was legally——

Judge NIXON. When I signed—when the conveyances were delivered to me, signed.

Mr. SENSENBRENNER. But you stated it was legally enforceable as of 1980 and that was the date of the contract, as stated on the deed?

Judge NIXON. It could have been legally enforced from that time, once they had become legally effective in 1981, but they were not legally effective until signed in 1981.

Mr. SENSENBRENNER. You have been a Federal judge for 20 years.

Judge NIXON. Yes, sir.

Mr. SENSENBRENNER. I assume that during that period of time you have presided over a fair number of criminal trials, is that correct?

Judge NIXON. A fair number, Mr. Sensenbrenner. Ours are mostly civil, and of the criminal docket, I guess 95 to 98 percent, or more, plead pursuant to plea bargaining agreements.

Mr. SENSENBRENNER. As the sentencing judge, have you ever sentenced a person who has been found guilty by a jury?

Judge NIXON. Yes, sir.

Mr. SENSENBRENNER. And during that period of time has any one of these defendants come and claimed that they were innocent, even though the jury found them guilty?

Judge NIXON. Come back to me?

Mr. SENSENBRENNER. At the time of sentencing they claimed that they were innocent, even though the jury found them guilty? Did that ever happen?

Judge NIXON. I don't know. To be perfectly honest, I don't recall. It's possible.

Mr. SENSENBRENNER. Well, what happens if it would have happened? The jury found them guilty and they came in and claimed that there was a miscarriage of justice. You had a presentence investigation report indicating the background. Would you have sentenced that person to jail?

Judge NIXON. Well, it would all depend on the circumstances, of course, and what they had to present and the status of the matter, and just what it involved.

Mr. SENSENBRENNER. Could you have? Would you have been so disposed?

Judge NIXON. To do what, sir?

Mr. SENSENBRENNER. To sentence that defendant to jail?

Judge NIXON. Well, as I say, it would all depend on what the circumstances are. In all——

Mr. SENSENBRENNER. But you would not rule jail out? You would not rule jail out, automatically?

Judge Nixon. Not just because of that claim, no. No, sir.

Mr. Sensenbrenner. When were you ordered to report to the Federal Correctional Facility at Eglin Air Force Base?

Judge Nixon. I reported, ordered to report on March the 23rd, 1988.

Mr. Sensenbrenner. And aside from your trips to Washington to attend these hearings, you have been incarcerated there ever since?

Judge Nixon. Yes, sir. Except for a brief period of time involving an emergency furlough because of my youngest daughter's illness a week or so ago.

Mr. Sensenbrenner. What do you think the public respect for the Federal judiciary is when a Federal judge is incarcerated?

Judge Nixon. Well, it depends on who the public is. It depends on who you're talking about. I think down in our area, if you're talking about me, there's still a great deal of respect for me, Mr. Sensenbrenner, I would—based on what we know. But the point is that I don't feel that I should be incarcerated because I feel that I am not guilty and should not be.

Mr. Sensenbrenner. Do you think that what has transpired here, your conviction, the fact that the court of appeals did not reverse the conviction and the Supreme Court denied cert. has brought pain on the Federal judiciary?

Judge Nixon. Brought pain? I would think certainly—and I've been concerned about the impact on the Federal judiciary and still am, as well as on myself and my family.

But if a person is convicted of something, that does not, in itself, foreclose the fact that that person is innocent, and you've got to remember this of course—that on appeal, there's a much different standard applied. It's not a trial, new trial on the merits, or de novo look at the matter.

The court of appeals has to defer, and consider all of the testimony of record that has been elicited against the defendant as being true, in reviewing a case.

Mr. Sensenbrenner. Well, do you think that what has transpired has brought pain to the Federal judiciary?

Judge Nixon. Would you define what you mean by, exactly, "pain". I am sure that it has not reflected creditably, and that's one of the things that I am very upset about, because I feel it's an unjust conviction, these are unjust convictions. Yes, sir.

Mr. Sensenbrenner. Judge Nixon, I would refer you to Tab 47 in the committee's exhibit book, which contains a declaration that you had made to the court, dated March 4th, 1988. Was that signed by you?

Judge Nixon. Yes. It is.

Mr. Sensenbrenner. Would you please read paragraph four to the committee.

Judge Nixon. Yes, sir. "I now stand convicted on two perjury counts. I do not believe the verdicts are just. I regret that my above-actions have caused pain to my family and others, including the Federal judiciary. I assure the court that I will never, in the future, permit this to happen again."

Mr. Sensenbrenner. I have no further questions.

Mr. Edwards. Mr. DeWine.

Mr. DEWINE. Thank you. Judge, some of this is going to be redundant, but I apologize for that, but I want to make sure I have got it straight in my mind.

Judge NIXON. Yes, sir.

Mr. DEWINE. Let's go—and I can't peg the date because apparently there is a conflict with the date—but the famous meeting with Bud Holmes that started in the office and then went to his house.

Judge NIXON. No, sir. It never started in his office.

Mr. DEWINE. Your testimony is it did not start in the office. Where did it start?

Judge NIXON. I met him at his farm, his home out at the farm.

Mr. DEWINE. About what time of day was that?

Judge NIXON. It was in the evening, after 5:00. I'd say between 5:00 and 7:00.

Mr. DEWINE. And again, apologizing for being redundant, but when was the first mention of the Drew Fairchild case brought up?

Judge NIXON. I don't know how long I had been there, Congressman DeWine, but I'd had at least one drink, and he was on the phone, and what have you, and we had had some conversation.

Mr. DEWINE. And what was that initial reference?

Judge NIXON. I said, Bud, I've been talking to Wiley Fairchild, and he has made an accusation of blackmail against you in connection with his son's matter that you're handling. Or something to that effect.

Mr. DEWINE. Hank Williams records are on?

Judge NIXON. Yes, sir.

Mr. DEWINE. He has got a drink; you have got a drink?

Judge NIXON. Yes, sir.

Mr. DEWINE. You are into a conversation. Is he on the phone at this point?

Judge NIXON. I do not remember whether he was on the phone or not. I doubt it. I doubt if I would—I'm pretty sure he was not because I wouldn't have mentioned that, if he was on the phone at that particular time.

Mr. DEWINE. You testified earlier, I believe, that he reacted rather strongly at that point, is that correct?

Judge NIXON. Yes, sir.

Mr. DEWINE. How many times did you testify in front of the grand jury?

Judge NIXON. Once.

Mr. DEWINE. Once. Looking back, are you sorry you did that?

Judge NIXON. Well, in view of what happened, if I had not voluntarily gone before the grand jury, I would not have been convicted and wouldn't be here now. Yes, sir. If I had taken the Fifth Amendment at that time, or not volunteered to go—because I don't know whether I was going to be subpoenaed or not——

Mr. DEWINE. Well, let's talk about that——

Judge NIXON. But I wasn't subpoenaed.

Mr. DEWINE. You were not subpoenaed?

Judge NIXON. No, sir.

Mr. DEWINE. Did the Federal prosecutor indicate to you whether they were going to subpoena you?

Judge NIXON. No, sir. I was never told that they were going to subpoena me.

Mr. DEWINE. Never told, one way or the other?

Judge NIXON. Correct.

Mr. DEWINE. What was your understanding at the time you testified in front of the grand jury, as to the focus of the grand jury investigation? You talked about it but I want to hear it again.

Judge NIXON. The focus of the grand jury investigation was whether there was an imbalanced oil and gas transaction between Wiley Fairchild and me. Whether there was——

Mr. DEWINE. Say that again. Whether there was a what?

Judge NIXON. I haven't finished. Would you like——

Mr. DEWINE. I missed the word.

Judge NIXON. Imbalanced.

Mr. DEWINE. Imbalanced.

Judge NIXON. That's the word that Mr. Weingarten used. I'm quoting his testimony, and his language.

And whether—and the handling of the Drew Fairchild case on the Federal level. That is, he was concerned about why it had not been prosecuted federally, and how it had been steered from Federal to State court, and whether I, as a Federal judge, had had something to do with that.

That is, whether I performed any official act as a judge to—in that regard, and the connection between the two.

Mr. DEWINE. What made you think that was the thrust of the grand jury investigation?

Judge NIXON. Two reasons. One, I knew the gratuity statute required an official act, to constitute the performance of an official act by a Federal official, to constitute a violation of the gratuity or bribery statute. That is, in the capacity of a Federal official, your official capacity.

And two, Mr. Weingarten led me to believe that by the things he said. One of the things he mentioned, I think it was—I don't know whether it was page 28 or 29 of the interview—that we're talking about the steering of the case from Federal to State court, and he said, frankly, that's what we're looking at, and throughout that interview, on other pages, we're talking about what I, as a Federal judge, could have done; whether the U.S. Attorney or his subordinates had contacted me about the case or talked to me about it; and various other matters.

I could give you several examples of that in the interview and in the grand jury testimony.

Mr. DEWINE. Examples he had suggested you mean?

Judge NIXON. Sir?

Mr. DEWINE. Examples he had suggested to——

Judge N[illegible] sir. Things that he had said, in addition to what I k[illegible] th[illegible]. There could have been no violation of any Federal law, r[illegible] law, with reference to anything that I did or said within the [illegible] of this case to a State District Attorney about a State case, [illegible]Wine, and especially under the circumstances here.

And the court so instructed the jury in my case.

Mr. DEWINE. Judge, putting aside the criminal statute for a moment—the criminal statute certainly is very important here—

looking at the propriety of this, what is your opinion about a Federal judge who does have a conversation about a State drug case with the prosecutor who is handling that case?

Just with those facts. Now I am not necessarily talking about your case, obviously we have reference to it, but the mere fact of discussing with a local prosecutor who has an ongoing criminal case that involves drugs? A Federal judge doing that.

Judge NIXON. Is that hypothetical, or is that within the context of what was testified here to?

Mr. DEWINE. Why don't you answer it both ways, in all fairness to you. Why don't you take it hypothetical, first, and then take it to your particular——

Judge NIXON. Well, I would have to know the facts of the hypothetical before I could answer it.

Mr. DEWINE. Let me give them to you again.

Judge NIXON. All right.

Mr. DEWINE. The bare facts.

Judge NIXON. All right.

Mr. DEWINE. A discussion takes place between a sitting Federal judge and a prosecuting attorney or district attorney in a State system. The Federal judge has no relationship necessarily to the case at all, but he has a discussion about that case.

And it is not just a passing inquiry: How is the case coming? It is some reference to the case in regard to the outcome.

Judge NIXON. Would you be a little more specific for me, please, and, first of all, there was no discussion of that type in this case. That would be another case other than mine.

Mr. DEWINE. All right. You describe again for us your case. What is your version, Judge, of what the conversation was and what your purpose was?

Judge NIXON. With whom? Wiley Fairchild or Bud Holmes?

Mr. DEWINE. Bud Holmes.

Judge NIXON. All right. I said Bud, I've been talking to Wiley Fairchild and he accused you of blackmail in connection with your handling of his son's case. That's it.

Mr. DEWINE. All right. Then there was a response from him. I mean——

Judge NIXON. That's correct.

Mr. DEWINE. —that question does call for a response. Would you agree with that? I mean ,it wasn't just informing him. I mean, you expected to get some sort of a response back?

Judge NIXON. It certainly elicited a response.

Mr. DEWINE. Yes.

Judge NIXON. Yes, sir.

Mr. DEWINE. Well, let's take your case. Let's take your case. The facts as you gave them. What is your opinion about the propriety of that—not legality now—the propriety of that? Ongoing case, you are a Federal judge and you make that statement to the prosecutor who you know controls the case.

Judge NIXON. I don't think it was improper at all, Mr. DeWine, because I wasn't asking him to do anything with reference to the case, even taking his own testimony, and excluding mine.

He said that I told him that someone had asked me to put in a good word, and when he said what do you want me to do?, that I told him I didn't want him to do anything.

And that when he said well, I'll pass it to the files, I said I don't want you to do anything.

Mr. DeWine. So today, as you sit here, you don't see anything—I am not saying illegal—but you do not see any problem with that kind of statement? I mean, you think that is perfectly all right under the canons, and——

Judge Nixon. You mean what I had done?

Mr. DeWine. Yes.

Judge Nixon. Yes, sir. Yes, sir.

Mr. DeWine. Let me go to your grand jury testimony, if I could, and again we are going over this, but I want to make sure I understand your version of what happened, what was in your mind at the time you uttered these words, because to me this whole case really comes down primarily to your testimony in front of the grand jury.

My first question has to with the following question: "Did he ever discuss the Drew Fairchild case with you?" Answer: "No, not to the best of my recollection. I think I would recall if he had."

Just to speed things up, I think you pretty much have already given us your version of that as far as discussion. The key word here is "discussion", from your point of view, is it not?

Judge Nixon. Yes, sir. That is the key word, plus the fact that of course I related it to any Federal involvement by me as an official, as a Federal official. That is, what involvement I would have had in investigation of this gratuity matter.

Mr. DeWine. Well, Judge, I want to make sure I understand. It seems to me what you are saying is, that when you walked into that grand jury, you had a certain statute, or statutes, that you thought was the focus of the investigation, and that your answers were all tailored—not necessarily to what the questions were—but were tailored to what the statute was.

Judge Nixon. What I had in mind——

Mr. DeWine. In other words, in all fairness, they were referenced to that. Would that be a fair statement?

Judge Nixon. That, plus the fact that he had led me to believe it was that. And plus the fact that I stopped him, as he admitted here twice, on the stand, for the first time, when he wanted to discuss the Drew Fairchild case with me, I told him I didn't want to hear about it.

Mr. DeWine. If the question would have been, instead of did he ever discuss the Drew Fairchild case with you—if the question had been did you ever discuss the Drew Fairchild with him, what would your answer have been?

Judge Nixon. The same thing. I never did discus the Drew Fairchild case with him, but of course that was not the question.

Mr. DeWine. No, I understand that. I was trying to understand your——

Judge Nixon. But there was no discussion of the case. The discussion—the mention was the blackmail, I passed on the blackmail charge allegation, and that is all.

Mr. DeWine. What you are saying——

Judge Nixon. And that was straightened out, apparently was a misunderstanding as I thought it would be at the best, or worst, and as far as I knew it was straightened out.

Mr. DeWine. Judge, what you are saying I believe is that you never discussed the merits of the case or the substance of the case. Is that what you are saying? Is that a fair description?

Judge Nixon. Well, to me, as a judge and as a lawyer, a discussion of the case means something more than merely a mention of a case. Just like maybe to you, as a Congressman, it involves more than just a—such and such a bill is coming up tomorrow, and somebody said did you and so and so discuss that bill as a result of that? And I think you would say no, and could honestly say no.

That certainly does not indicate to me, or would not, that you purposely lied about that, or told an untruth with the purpose of deceiving someone.

Mr. DeWine. Let me go to another part of your testimony, Judge. "I have never talked to anyone about the case, any Federal judge, or State judge, Federal prosecutor or State prosecutor." If I could put the two sentences together, basically you are saying I have never talked to a State prosecutor about the case.

It is your testimony today or your feeling that that statement still is true?

Judge Nixon. I feel that that is the truth because as I understood it, the question was whether I did anything as a Federal official, a Federal judge, and I related that to the steering of that case, how it got from Federal to State court. And even the FBI stated in their 302, that some pressure must have been put on the Federal officials, or the U.S. Attorney's Office by someone, to help get that case out of Federal to State court.

So the question was whether this State prosecutor had someone help him do that.

Mr. DeWine. But here, Judge, the word is not "discuss." You relied on the word "discuss" before, and I understand your explanations.

Here, it is, "I have never talked to anyone about the case."

Judge Nixon. In connection with—excuse me. Had you finished? I am sorry.

Mr. DeWine. No, no. The only problem—this is your own volunteered statement, and you are adding some additional facts, but these facts, or that part of the statement is simply not here. I will read it again.

"I have never talked to anyone about the case. Any Federal judge or State judge, Federal prosecutor or State prosecutor. And I have never handled any aspect of the case in Federal court."

Judge Nixon. Well, I think——

Mr. DeWine. There is an "and" there. I mean——

Judge Nixon. Well, I think you have to read them together. In other words, I did not handle any aspect of the Federal case and I didn't do anything with reference to the Federal case when it was in Federal court. I didn't even know it was there on the Federal level, and it was not prosecuted in Federal court for some reason, and I think the U.S. Attorney—as I have stated throughout my grand jury testimony—it was his prerogative to prosecute it or not.

A Federal judge does not have the authority to order prosecution, a continuation of prosecution or not. That is up to the U.S. Attorney's Office. We have had that case settled down in Mississippi, when one of our judges and the U.S. Attorney got into it, years ago.

And also the steering of the case.

Mr. DeWine. Well, Judge, I am conversant with the relationship between the Federal system and the State system.

Judge Nixon. Yes, sir.

Mr. DeWine. I am not quarreling about that. Thank you, Judge.

Judge Nixon. Yes, sir. You are welcome.

Mr. Edwards. Mr. Schumer.

Mr. Schumer. Thank you, Mr. Chairman. I would like to just flesh out a little bit about the phone conversation that you had when you went to get the records at Bud Holmes' house.

Judge Nixon. Yes, sir.

Mr. Schumer. And you say in your testimony, and you've said that you took the phone, Mr. Fairchild was groggy or whatever—half asleep or half-drunk in your words—he didn't sound right. "He said: I'm glad you mentioned that matter to Bud.“ He said: "I'm satisfied.“

Why didn't you, knowing the—just as a Federal judge in this kind of situation—knowing that everything is going up—why didn't you then qualify something to Fairchild, so that it would be perfectly clear what went on here?

In your testimony you state that you didn't know what Holmes had said to Fairchild. Here, Fairchild is saying something that could have a number of different implications, some of which would be violations of the law.

And yet, it seems to me a normal reaction would be for you to qualify what you said. Now—you know—now, Wiley, we just—Mr. Fairchild, whatever you called him—we're talking about this blackmail thing, aren't we?

Judge Nixon. Because Mr. Schumer, if you hear Wiley Fairchild testify——

Mr. Schumer. I did.

Judge Nixon. Did you? He said that all he mentioned to me was about the blackmail. He didn't ask me to do anything about his son's case. He didn't even ask me to pass it on about the blackmailing. And that's what his concern was, and as far as I knew, that's the only thing that was his concern because he shouldn't have, and couldn't have, expected me to say anything else.

And I don't know what he and Bud Holmes had talked about, but that's the only thing that I related to Bud Holmes, was the blackmail accusation, and if he had just talked to Wiley Fairchild, and he told me he was satisfied that that was resolved, then I thought the misunderstanding about the blackmail was resolved.

Mr. Schumer. Then go on to say you were taken aback, you were disgusted. If this conversation was simply about the blackmail, and in your mind there was nothing wrong with it at all, why would you then be disgusted?

Judge Nixon. Because he did it without my knowledge, and put me on the telephone there without—and put me right in the middle of the thing. I didn't care whether he called him and straightened it—I was hoping it would be—the misunderstanding would be straightened out because I felt it was nonsense.

But the way that it was done. If you'd come to me and tell me something like that, and I've called somebody without your knowledge, and then put you on the line—say here he is—the man had just told me that—you know. I just didn't like the way it had been done to me, Mr. Schumer. I didn't chastise him any more than that, as I stated. That's what I was disgusted about.

And he said—I asked him why he did it that way, and he said he wanted to get the damn thing—I'm quoting—"wanted to get the damn thing straightened out."

And to get something straightened out, I think is a misunderstanding that we were talking about, apparently. The accusation of blackmail, that's all I could figure that meant, to get it straightened out.

Mr. SCHUMER. But again, if there was nothing wrong with doing that, which in your state of mind—back then, as you think back about it, you say you are—I mean, here you are; you're sitting in a room, Bud Holmes gets on the phone. Can you refresh my recollection?

What were you doing while Bud Holmes was making that initial call?

Judge NIXON. Well, apparently——

Mr. SCHUMER. You were in the room, I presume?

Judge NIXON. Yes, sir, listening to the records, and picking some out over at the counter where the records were.

Mr. SCHUMER. How big a room is it?

Judge NIXON. Oh, I guess 30 by 40, or bigger.

Mr. SCHUMER. Were you playing the records on the record player at the time?

Judge NIXON. Yes, sir, and had my back to him at the counter there where the records were.

Mr. SCHUMER. Again, you are in the room. Did you know he was calling—Holmes was calling Fairchild at the time?

Judge NIXON. No, sir.

Mr. SCHUMER. He was just on the telephone?

Judge NIXON. Yes, sir. Oh, he was making a lot of calls, and received them, as usual with Bud Holmes. You can hardly ever——

Mr. SCHUMER. And so your "disgusted" was simply being asked to take—why did you not just say I don't want to talk about this. If you were disgusted again, why didn't you just say this is inappropriate to talk about right now? Why did you go ahead with the conversation, and then why did you not just—I am just reading your testimony here again. "Why'd you call Wiley? What'd you say to him? He said I want to get the——

Did you get angry at Bud Holmes?

Judge NIXON. I was disgusted because he——

Mr. SCHUMER. Did you yell at Bud Holmes?

Judge NIXON. No, sir.

Mr. SCHUMER. No.

Judge NIXON. No, sir.

Mr. SCHUMER. That is my question. Here you are, you are sort of set up, in your judgment set up in a perfectly legal way——

Judge NIXON. Yes, sir.

Mr. SCHUMER. —but you are being trampled upon in a certain sense, and you do not express any—you are disgusted. You do not express any anger to either Fairchild or to Bud Holmes.

Judge NIXON. No, sir.

Mr. SCHUMER. Why?

Judge NIXON. Well——

Mr. SCHUMER. Why not to Bud Holmes, after you got off the phone?

Judge NIXON. If you know Bud Holmes, there's no sense in expressing anger, it's done, and I was his guest there in his home and borrowing his records, and we've been friends a long time. And I think I stated—asked him why he did that. And I think that was enough? "Why'd you do that, Bud?" And he said "I wanted to get the damn thing straightened out."

Mr. SCHUMER. Did you, any time subsequent to that point, but before any of these investigations began, express anger or disgruntlement to Bud Holmes?

Judge NIXON. No, sir. There was no reason to, because I always considered the, quote, "blackmail" charge to be nonsensical.

Mr. SCHUMER. No, but just discussed—forget the blackmail charge.

Judge NIXON. No, sir.

Mr. SCHUMER. Just discussed the way you were put on the phone, Wiley Fairchild says "Thanks very much. I'm glad you straightened it out" and——

Judge NIXON. No, sir. I was done and I thought the misunderstanding was straightened out and there wasn't any sense in my doing that.

Mr. SCHUMER. Did Bud Holmes ever do that to you at any time before this happened, in another situation? Just put you on the phone, and——

Judge NIXON. No, sir.

Mr. SCHUMER. Or after?

Judge NIXON. Not to my recollection.

Mr. SCHUMER. The only other question I have, and it is follow-up on Mr. DeWine's questioning, in terms of not the legality but the ethics.

We all know about the appearance of impropriety. Why, if you were investing money with a man, would you do anything, because of the appearance of impropriety, related to his case at all?

Judge NIXON. I don't quite understand the question. I'm sorry.

Mr. SCHUMER. You just stated to Mr. DeWine—and I imagine you have stated before, too many times for your own liking—that you thought what you did was not only legal but also ethical?

Judge NIXON. I didn't think it was unethical at all—yes, sir—because I wasn't talking about the case, or asking him to do anything about a case or anything. I was passing along a blackmail charge against a very long-time friend who I didn't think would be guilty of such a thing at that time.

And I thought it was a misunderstanding.

Mr. SCHUMER. Don't you think the appearance of impropriety would demand that once you had invested a large sum, or a significant sum or money with a gentleman, that you ought not to bring up anything about any legal proceeding?

You ought not to be involved in any legal proceeding that was before any other official?

Judge NIXON. I didn't pass this on for Mr. Fairchild's benefit. I passed it along for Mr. Holmes' benefit, my long-time friend, the District Attorney.

Mr. SCHUMER. But you did not disclose to Mr. Holmes, or did you, at that time, that you had some kind of financial relationship with Mr. Fairchild?

Judge NIXON. I think he knew that before. I think that had been mentioned some time back, yes, sir, in passing, and of course he was one of the ones I had asked about, originally, about investing with Wiley Fairchild in an oil and gas transaction.

Mr. SCHUMER. And it still does not strike you that there is an appearance of impropriety in what you did to—you know, knowing the canons, and knowing how all of us try to avoid any appearance of impropriety, that mentioning anything about the blackmail, or anything else, that would have worked to Mr. Fairchild's benefit—even though that was not your motivation—would cause such an appearance?

Judge NIXON. No, sir, because I was hit with the blackmail allegation by Mr. Fairchild right out of the blue. I didn't invite that. And of course I'm asked why I didn't volunteer it to some and why I tried to get it straightened out with others, and when you're put in that spot—you know—it's——

Mr. SCHUMER. Were there any other times where you had any kind of financial interest with someone, that you somehow intervened in a legal proceeding—in a legal way—that would have in effect helped them, had something, had the thing——

Judge NIXON. I don't recall any, offhand, Mr. Schumer. I doubt that, seriously.

Mr. SCHUMER. So this was the only one?

Judge NIXON. Well, I didn't intervene for that reason here.

Mr. SCHUMER. I understand that.

Judge NIXON. There was no intervention at all. I didn't try to help him in this case.

Mr. SCHUMER. Again, Judge, I'm looking at the appearance as opposed to the—I have no further questions. Thank you.

Mr. EDWARDS. I am going to have one question before we go to Ms. Naughton.

Judge Nixon, I imagine you would say that Bud Holmes is the chief witness that hurt you the most, is that correct?

That either he is telling the truth, or you are telling the truth, in so far as the night at the farm?

Judge NIXON. Yes, sir. But also, in this hearing, even taking his testimony, without considering mine, he at no time said I asked him to do anything for Drew Fairchild.

He said I told him I didn't want him to, and I told him Wiley Fairchild had asked me to pass it on.

Mr. EDWARDS. He has told several stories about that aspect.

Judge NIXON. Yes, probably so. I guess what—

Mr. EDWARDS. The last story he told us was that it was maybe 50/50. That Bill Porter influenced him to move the case to the files, and that your contact with him that night had something to do with it, too. You recall that, a couple of——

Judge NIXON. Yes, Mr. Chairman. I think he also said that he didn't think I tried to influence him, but that's what he did as a result of it, and that when he wanted to talk to me about the case I told him I didn't want to hear about it. Yes, sir.

Mr. EDWARDS. That is correct. But in his declaration that he signed early this year, he said you had nothing to do with his decision, whatsoever, isn't that true?

Judge NIXON. Yes, sir. Yes, Mr. Chairman.

Mr. EDWARDS. And one of our witnesses—perhaps it was Mr. Weingarten—said that "Bud" perjured himself every time he went into the jury room, which was three separate days, isn't that correct?

Judge NIXON. Yes, sir, and he charged him with perjury as a result of each of his grand jury appearances, except the last one.

Mr. EDWARDS. He testified before this subcommittee, in answer to a couple of questions that I asked him, that he had had up to six drinks that night, some at the office and some at the farm.

Do you have any idea of how many he had at the farm?

Judge NIXON. No, sir, but I could tell he had had quite a few when I got there from some—he'd had some somewhere, and then he had several more after I was there.

Mr. EDWARDS. But he said he drove you out, and you said you drove yourself out?

Judge NIXON. Yes, sir.

Mr. EDWARDS. So there is a conflict there.

Judge NIXON. Yes, sir.

Mr. EDWARDS. The blackmail story—whatever—the fact of the blackmail and Wiley Fairchild, that being the only subject that Wiley mentioned to you, is disputed by Bud Holmes. He did not say in his testimony that—he said that a lot more took place at the farm.

But you are corroborated, to some extent, by Wiley, a few days previous to this, having somebody go to the FBI and complaining about blackmail, isn't that correct?

Judge NIXON. Yes, Mr. Chairman.

Mr. EDWARDS. So one of the issues in this matter is your credibility and Bud Holmes' credibility, veracity. He does not come out too well.

Judge NIXON. And also, Wiley Fairchild said that the only thing he mentioned to me was blackmail, and that Bud Holmes didn't mention anything about passing the case on to the files in the telephone conversation, or that he didn't—I didn't say anything about thank you for putting my children into this. There's so many things that Bud Holmes's impeached on, besides his own self-conflicting sworn statements before the grand jury each time he went, and his declaration made recently.

Mr. SCHUMER. Mr. Chairman.

Mr. EDWARDS. Yes, Mr. Schumer.

Mr. SCHUMER. Just to follow up on that because I am troubled by that.

Mr. EDWARDS. Sure.

Mr. SCHUMER. But Wiley Fairchild also stated that it was you who placed the call to him that night, not Bud Holmes, is that correct?

Judge **Nixon**. He said that I was the first one he thought—he remembered talking to, but he said he was pretty drunk himself at that time.

And Bud Holmes said, on several occasions, that he didn't know who placed it. He thought he did, if I said he did, and then he changed that for the first time after his plea bargaining agreement, went back to the grand jury.

Mr. **Schumer**. But it seems to me, in reviewing his testimony, he is pretty specific. He says that you called him, that he recognized your voice on the phone. That Bud Holmes got on the phone after that, and he recognized his voice, and then he states that Bud said: "Wiley, when this man asks me to do something, I don't ask no questions, I just go ahead and do it."

Do you have any recollection of that happening? That is Bud Holmes talking.

Judge **Nixon**. No, sir. I didn't even hear Holmes' conversation with Fairchild.

Mr. **Schumer**. So it would be your stipulation that, your argument, that Wiley Fairchild, in this instance, being either tired, drunk, or whatever else, mixed up who placed the call?

Judge **Nixon**. I would assume so.

Mr. **Schumer**. I am sorry, Mr. Chairman.

Mr. **Edwards**. All right. We do have testimony, I believe, that it is customary, with Wiley Fairchild, that he starts drinking when the news comes on at night, and by 7:00 o'clock he is asleep. Isn't that correct?

Mr. **Schumer**. Yes, sir.

Mr. **Edwards**. And apparently this call took place around 7:00 o'clock or thereabouts.

Judge **Nixon**. Or a little later; yes, sir.

Mr. **Edwards**. Certainly not much earlier that than. It could not have, very well.

Judge **Nixon**. No, sir.

Mr. **Edwards**. Thank you, Judge. Ms. Naughton.

Ms. **Naughton**. Thank you, Mr. Chairman.

Now Judge Nixon, for the record, we have been talking a lot about what different witnesses testified to at this hearing.

It is true, is it not, that you have been present during all of the testimony by all of the witnesses in these hearings, is that not correct?

Judge **Nixon**. Yes.

Ms. **Naughton**. And that is an advantage that the other witnesses did not have, and that they were not present when each other testified, is that not correct?

Judge **Nixon**. Yes.

Ms. **Naughton**. Now let's start talking about the oil transaction in which you engaged with Wiley Fairchild.

You mentioned that it first came up during a conversation you had with Carroll Ingram, and you testified that you had known Carroll Ingram for many years. Is that correct?

Judge **Nixon**. Yes.

Ms. **Naughton**. And do you know him to be an honest and honorable man?

Judge **Nixon**. Yes. I do.

Ms. **Naughton**. Do you believe he testified truthfully here?

Judge **Nixon**. I believe he did to the best of his recollection. He's had to try to reconstruct a lot of this, I'm sure, like all of us, and as he told you, and told us, rather, yes.

Ms. **Naughton**. Now you testified to us before, that it was Carroll Ingram that first brought up the name of Wiley Fairchild, just as you had at trial. And yet Carroll Ingram told this committee that it was you who first mentioned the name of Wiley Fairchild in asking about oil investments.

Do I have that correct?

Judge **Nixon**. That's correct, and that was——

Ms. **Naughton**. Is Carroll Ingram lying about that?

Judge **Nixon**. I wouldn't accuse Carroll of lying. That's my best recollection, based upon what I recall, and if Carroll recalled it differently, I certainly respect his recollection. It's just an honest difference in recollection of something that happened years before.

Ms. **Naughton**. Your best recollection, then, Judge, is that he first brought up the name of Wiley?

Judge **Nixon**. Yes.

Ms. **Naughton**. Was it his idea that you should invest with him?

Judge **Nixon**. No, it wasn't. It was mine.

Ms. **Naughton**. Now it was also your testimony that you did not know prior to having this conversation with Carroll Ingram, that Wiley Fairchild was in the oil business?

Judge **Nixon**. That's correct.

Ms. **Naughton**. Judge, wasn't that fairly common knowledge in Southern Mississippi at the time?

Judge **Nixon**. Not to my knowledge. I wouldn't know that, whether it was or not. All I could say is what I knew and didn't know.

Ms. **Naughton**. Now, Carroll Ingram did tell you, did he not, that Wiley Fairchild was successful in the oil business, correct?

Judge **Nixon**. Yes.

Ms. **Naughton**. Did he tell you he had made a lot of money in his investment?

Judge **Nixon**. I think the substance of his conversation was to that effect, yes.

Ms. **Naughton**. And you also knew, did you not, that Wiley did not sell his investments on the street, or in the open market, isn't that correct?

Judge **Nixon**. I didn't know the extent of his business, but I do know, as Carroll said, that he was in the oil and gas business.

Ms. **Naughton**. Well, didn't you testify at your trial, at page 1637, that you knew that not everyone could go to Wiley for an investment in the oil market, right?

Judge **Nixon**. Well, I feel that way, yes. I don't think any, just anyone could go. Yes.

Ms. **Naughton**. So this is not an opportunity that he gave to the person on the street, to your knowledge, at the time?

Judge **Nixon**. I would think that's a fair statement.

Ms. **Naughton**. Now from January of 1980, or so, until February of 1981, when the deeds were actually signed, do you recall how many times you talked with Wiley?

Judge **Nixon**. No, not exactly. Several.

Ms. Naughton. Was it more than ten?

Judge Nixon. Oh, no.

Ms. Naughton. Less than ten?

Judge Nixon. I think so, Ms. Naughton. I really didn't count them, I couldn't be sure, but I doubt that it was more than ten. It could have been.

Ms. Naughton. And how many times did you visit his office?

Judge Nixon. Between what dates?

Ms. Naughton. Let's say up until February 1981.

Judge Nixon. How many times had I, up until that time?

Ms. Naughton. Yes.

Judge Nixon. Once.

Ms. Naughton. And that was in the discussion that you described earlier?

Judge Nixon. Yes.

Ms. Naughton. I forget if you had mentioned this. Was Rodney Fairchild present for that conversation?

Judge Nixon. I don't believe he was. Which conversation are you talking about?

Ms. Naughton. This would be the one in 1980.

Judge Nixon. Not to—no, I don't think he was. If he was, I don't recall that he was.

Ms. Naughton. Now in these conversations with Wiley Fairchild, did you discuss the oil transaction that you were about to enter into?

Judge Nixon. With Wiley Fairchild?

Ms. Naughton. Yes.

Judge Nixon. In 1980?

Ms. Naughton. Well, up until the deeds were actually executed, in February of 1981. Did you discuss with Wiley the oil transaction?

Judge Nixon. Yes, that time in his office.

Ms. Naughton. And what did Mr. Fairchild tell you about the wells he had selected?

Judge Nixon. He told me he had selected wells in those three counties in question, and he thought they were very good, but that it was a risky business, and I told him—I acknowledged that and told him I was willing to take the risk.

Ms. Naughton. Did he tell you how good they were in comparison to other wells that he had?

Judge Nixon. No.

Ms. Naughton. Did he tell you that any of them had already been tested?

Judge Nixon. No.

Ms. Naughton. Did he tell you any test results?

Judge Nixon. No.

Ms. Naughton. Now did you negotiate with Wiley Fairchild any terms of this agreement?

Judge Nixon. No.

Ms. Naughton. Do you were basically trusting Wiley Fairchild's judgment to give you a fair deal, is that——

Judge Nixon. His reputation and his judgment, and the integrity and honesty, and judgment of Carroll Ingram.

Ms. Naughton. You hadn't met Wiley before, is that correct?

Judge NIXON. That's correct.

Ms. NAUGHTON. And you are not related to him in any way?

Judge NIXON. No.

Ms. NAUGHTON. At that time, did you know that he had put Governors and Mayors into similar oil deals?

Judge NIXON. Not until I met with him in—he mentioned a Mayor and a Governor when I met with him in February or March of 1980, at the first meeting at his office, when I was introduced to him by Carroll.

Ms. NAUGHTON. Excuse me. Didn't you tell us you had met him in his office in 1980?

Judge NIXON. No. I said I was there in 1980. That was the first——

Ms. NAUGHTON. That is what I mean.

Judge NIXON. That was the first meeting.

Ms. NAUGHTON. So the second meeting occurred in February or March of 1981?

Judge NIXON. No. It occurred in May of 1981.

Ms. NAUGHTON. All right. Did you meet with Wiley Fairchild in February or March of 1981?

Judge NIXON. No.

Ms. NAUGHTON. Your first meeting with him was when?

Judge NIXON. In about February or March of 1980.

Ms. NAUGHTON. And when did you first learn that Wiley Fairchild had put public officials into oil deals?

Judge NIXON. When I was talking to him there.

Ms. NAUGHTON. When?

Judge NIXON. In 1980.

Ms. NAUGHTON. In 1980?

Judge NIXON. Yes.

Ms. NAUGHTON. Judge, why did you think—given what you know, and given your conversations with Wiley—why did you think that Wiley wanted to put you into the deal as opposed to anybody else on the street that he did not know?

Judge NIXON. Well, he said he had heard of me, and wanted to meet me, and knew I was a person of good reputation, and he was genuinely impressed with the fact that—of why I wanted to invest, and also, Carroll Ingram had recommended me.

Ms. NAUGHTON. When you say he said he had heard of you, did he hear of you as a Federal judge?

Judge NIXON. I don't know how he had heard of me. I'm just telling you what he said.

Ms. NAUGHTON. All right. Did he refer to you as "Judge"?

Judge NIXON. I think so, yes.

Ms. NAUGHTON. Every time he spoke to you, did he refer to you as Judge?

Judge NIXON. I don't know about every time.

Ms. NAUGHTON. Did he ever call you Walter?

Judge NIXON. I don't know whether he did or not. I don't recall.

Ms. NAUGHTON. Judge, Congressman DeWine asked you a question about propriety versus illegality, and I want to ask you this question. Did it ever cross your mind, at the time, that there may have been an appearance of impropriety for you to even approach

Carroll Ingram, an attorney who appeared in your courtroom on cases you handled, to ask you to put him into a financial deal?

Judge NIXON. Well, ma'am, Carroll Ingram and I were very close friends. We were social friends and personal friends, and it was never on a lawyer-judge basis that I talked to Carroll about these investments.

It was in Jackson that night when we were having dinner together. His wife and he, and my wife and I, were social friends, and we'd visited in each other's homes. I had eaten in his home several times. We had lunch together and dinner together many times, and we were close personal friends.

And you've got to—people who don't live in the areas such as ours don't realize the informal, friendly atmosphere that exists among the bench and bar.

Ms. NAUGHTON. Did Carroll Ingram, during that time period, fail to return some of your telephone calls when you were inquiring about what was taking so long on the deal?

Judge NIXON. I don't know. I think—I'm not sure about that. I heard what Carroll said about it, but I don't recall, independently, really.

Ms. NAUGHTON. You do not recall whether or not you called him and he failed to return your calls?

Judge NIXON. No, I don't. It's possible, but I don't recall, one way or the other.

Ms. NAUGHTON. Now you did not negotiate for certain wells, did you, with Mr. Fairchild?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. And you did not negotiate for a certain number of wells, is that correct?

Judge NIXON. That's correct.

Ms. NAUGHTON. And I think you had told us you were not sophisticated in the oil business, did not know much about it. Is that correct?

Judge NIXON. That's definitely correct.

Ms. NAUGHTON. But you said you had invested years ago in some oil dealings. I believe you said before you assumed the bench, is that correct?

Judge NIXON. Yes, if you want to call it an investment.

Ms. NAUGHTON. How much?

Judge NIXON. It wasn't much, when I was practicing law. I don't recall, it's been so many years ago. All I know is that none of them panned out. One—I think we had one that we thought we were going to do something with, but my proportionate costs of each month were exceeding the income from it, so I figured I wasn't making too good on that producer.

Ms. NAUGHTON. So was that, in that instance, a working interest? You were actually paying for the drilling?

Judge NIXON. I don't remember what it was. I'm not even that sophisticated or recall that much about it, honestly.

Ms. NAUGHTON. Was that a transaction that was basically off the street?

Judge NIXON. No. A friend of mine. I bought it from a friend of mine.

Ms. NAUGHTON. Judge, have you ever asked any other lawyer who has ever appeared before you to put you into a financial transaction?

Judge NIXON. I don't know. I may have talked to some more of my friends with reference to that who happen to be lawyers. I wouldn't ask any who was not a personal friend, or was pretty close to me, of course. I wouldn't just go ask anyone about that.

Ms. NAUGHTON. Why not?

Judge NIXON. Well, because I wouldn't.

Ms. NAUGHTON. Why not?

Judge NIXON. I just wouldn't do it.

Ms. NAUGHTON. Why not?

Judge NIXON. Because I wouldn't feel comfortable doing it.

Ms. NAUGHTON. Why wouldn't you feel comfortable?

Judge NIXON. Well, because I wouldn't. Just like you wouldn't do a lot of things with people who are not friends of yours. Would you go—I mean, I wouldn't go some certain places with friends who are—people who are not friends of mine. Many things.

Ms. NAUGHTON. But is there anything special about asking people with whom you are not friends, whether or not they know of or could put you into a good business deal?

Judge NIXON. I think so. I wouldn't have a great deal of trust in them to begin with.

Ms. NAUGHTON. What other attorneys do you think you may have approached to put you into good financial deals?

Judge NIXON. As I told you, I don't know. I think I named some people during the trial.

Ms. NAUGHTON. Judge, did any other attorney that you know of, or that practices in Federal District Court in Mississippi, ever put you into, or arrange for you to be into another business deal?

Judge NIXON. I don't know. Would you name who you're talking about. I'll tell you, if you want to ask me, specifically. I'm not trying to hide anything. If you'll ask me.

Ms. NAUGHTON. Well, we are just asking if this had ever been done before.

Judge NIXON. I don't recall.

Ms. NAUGHTON. It could have been and you don't recall, or is the answer no?

Judge NIXON. I don't know. I don't recall, one way or the other.

Ms. NAUGHTON. You mentioned earlier in your testimony, that Wiley was making a profit in selling these interests to you. Do you recall that testimony?

Judge NIXON. Yes. That's what he said, and that's what I said.

Ms. NAUGHTON. When did Wiley tell you that he was making a profit from the sales to you?

Judge NIXON. I don't know when I learned that. I didn't know it in advance, but from what I understood, he has always said that he made a profit.

Ms. NAUGHTON. Well, my question is not what he has always said. My question was: Did he specifically tell you—let's say prior to 1983—that he was making a profit in selling you these mineral interests?

Judge NIXON. No. I don't think you would expect a seller to tell a buyer I'm making a profit. If I had asked are you making a profit? No, I don't think that's anything out of the ordinary.

Ms. NAUGHTON. So this is something you learned subsequently, probably in preparing for trial?

Judge NIXON. Yes, ma'am. I knew he was a reputable oil dealer, and very successful, and a good businessman. That's all.

Ms. NAUGHTON. Did Mr. Fairchild indicate to you that he had been planning on selling these interests to someone else, rather than yourself?

Judge NIXON. He didn't state that, one way or the other, that I recall.

Ms. NAUGHTON. And likewise, he never indicated to you that he was intending on keeping them if he hadn't sold them to you, is that——

Judge NIXON. No, he didn't indicate that, either.

Ms. NAUGHTON. Did you ever call the Mississippi Oil and Gas Board, or in any way make any attempt to look up the production of the wells which Mr. Fairchild indicated he would put you into?

Judge NIXON. No, and I wouldn't have known how to do that anyway.

Ms. NAUGHTON. Have you heard of the Mississippi Oil and Gas Board?

Judge NIXON. Yes.

Ms. NAUGHTON. And you would not know how to call them?

Judge NIXON. I would know how to call them, but I wouldn't know what to even talk to them about.

Ms. NAUGHTON. Didn't Mr. Ingram give you the description of the properties that you were buying?

Judge NIXON. No, ma'am. Just by county.

Ms. NAUGHTON. Just by county?

Judge NIXON. Yes.

Ms. NAUGHTON. He never gave you any more detailed description than just the counties?

Judge NIXON. That's correct.

Ms. NAUGHTON. Did he give you the acreage?

Judge NIXON. No, he didn't. Not until I saw how much acreage was on the deeds of conveyance.

Ms. NAUGHTON. Did you hear Mr. Ingram testify before this committee that he had indeed written down the acreage and the description, and had told you?

Judge NIXON. That what?

Ms. NAUGHTON. That he had written down the acreage and a description, and had told you what the properties were.

Judge NIXON. No, ma'am. He didn't tell me the acreage. He told me about counties. I don't think he testified that he gave me any acreage. He wrote them down, he said, and put them in his desk drawer.

Ms. NAUGHTON. All right. Is it your recollection, then, he only gave you counties and not the acreage?

Judge NIXON. Yes, ma'am, until the deeds of conveyance were delivered.

Ms. NAUGHTON. When did Carroll Ingram call you to tell you that Mr. Fairchild had picked out the wells?

Judge NIXON. It was in the very latter part of 1980.

Ms. NAUGHTON. And how did Mr. Ingram describe these wells?

Judge NIXON. He just described them as wells in these three counties, and I asked him the amount of the investment, what it would cost, and he told me.

Ms. NAUGHTON. Did he tell you anything else about it?

Judge NIXON. No. That was in the latter part of 1979. If I said 1980, I was mistaken. As I testified previously, the latter part of 1979. I misspoke.

Ms. NAUGHTON. When Mr. Ingram called you to tell you that the wells had been chosen, did you tell anybody about the deal that you had entered into with Wiley Fairchild?

Judge NIXON. I don't know. Specifically, who are you referring to? I don't remember telling anyone, but if you want to ask me specifically about any certain person, I'll be happy to try to answer it for you. I don't recall, offhand, doing that.

Ms. NAUGHTON. Well, let's ask this: Until the Department of Justice attorney and the FBI agent came to interview you in 1984, to your knowledge, who else knew about the oil transaction other than Mr. Fairchild, Mr. Ingram, and vourself?

Judge NIXON. Any member of the public, and any lawyer who searched the land deed records of the various counties and worked with them, and anybody who wanted to read my financial disclosure statement that's published, a public record in the clerk's office in Jackson, Mississippi.

Ms. NAUGHTON. My question is, to your knowledge, who else knew about it? Did you tell anyone?

Judge NIXON. Not that I recall, except my wife of course.

Ms. NAUGHTON. Now under the terms of the understanding you had with Mr. Fairchild, he was free to select the properties he felt would be appropriate. Is that correct?

Judge NIXON. Apparently so, yes.

Ms. NAUGHTON. Once he selected the three wells, it is your understanding that he could have changed his selection, and maybe substituted one well with another?

Judge NIXON. I don't know. I guess he could have. I don't know.

Ms. NAUGHTON. If he had done that, and called you back, and said instead of the Rogers well we are going to put you into the Adams well, would you have assumed the deal was still good and enforceable?

Judge NIXON. Yes.

Ms. NAUGHTON. When did you learn that the wells were producing?

Judge NIXON. I think it was some time in 1981. I am not sure whether it when I visited him in May of 1981, or probably subsequent thereto, and before 1982. Because the division orders were sent to me for my signature, or brought to me in the very first part of 1982.

Ms. NAUGHTON. In January of 1982?

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. So you think you learned they were producing in 1981, is that correct?

Judge NIXON. Sometime in—yes, 1981.

Ms. NAUGHTON. Did you learn about——

Judge NIXON. In fact I think he told me one time in a phone conversation that the wells were on line, and I asked what "on line" meant. Or some of them were on line, I think he said, and he said that meant producing.

Ms. NAUGHTON. Who said that?

Judge NIXON. Mr. Fairchild.

Ms. NAUGHTON. Did he say how many wells were on line?

Judge NIXON. I don't know that he specified. I'm really not sure.

Ms. NAUGHTON. Well, is it your understanding, Judge, that all of them went on line at the same time, or, was it your understanding they were going on at different times?

Judge NIXON. Well, from what I've heard subsequently, in all of these proceedings, I believe they went on at different times. At that time I don't think I knew.

Ms. NAUGHTON. At that time you did not know when they were going into production?

Judge NIXON. I do not think so.

Ms. NAUGHTON. Well, you testified earlier that one of the things you thought——

Judge NIXON. I might have.

Ms. NAUGHTON. I am sorry. Are you finished?

Judge NIXON. I say I might have, but I don't know.

Ms. NAUGHTON. Well, you testified earlier that one of the reasons you said in the interview that the transactions may have been unorthodox was because of the length of time from the point at which the wells actually produced until you actually received royalty payments.

Judge NIXON. Correct.

Ms. NAUGHTON. My question is to you: If you did not know when the oil wells were producing, how could you have thought that it was an inordinate length of time until you got your royalty check?

Judge NIXON. As I told you, that I understood—I recall that it was either May of 1981, or shortly thereafter, that Mr. Fairchild told me that they were on line in a telephone conversation, and I asked him what that meant and he said producing, and of course I didn't receive any royalties until March of 1982, almost a year later. Royalty payments.

Ms. NAUGHTON. But it is true, is it not, that the Wilkie well was not producing until October of 1981?

Judge NIXON. I'm not sure. If you say so, I'll take your word for it.

Ms. NAUGHTON. Now, if we can get to the notes, and the terms of the payments of the notes. When was it agreed that Wiley Fairchild would carry the notes that you would sign?

Judge NIXON. I don't know when it was agreed upon. I know when I was informed of that by Carroll Ingram.

Ms. NAUGHTON. Well, then maybe we should step back. Is it your understanding of basic contract law, Judge, that a contract is not formed until both parties agree to the terms of the contract? Is that a fair statement?

Judge NIXON. Yes.

Ms. NAUGHTON. All right. So the term would not have been agreed to until you were told of it, and acquiesced to it, and said that was acceptable, correct?

Judge NIXON. Correct.

Ms. NAUGHTON. And my question is: When did that occur?

Judge NIXON. Well, I considered the deal to have been made, or the contract to have been formed, when I talked to Wiley Fairchild in his office from the standpoint of a gentlemen's agreement, but it was not formalized, or made legally effective until the conveyances were delivered to me in late February, or early March of 1981.

Ms. NAUGHTON. Well, in this gentlemen's agreement in 1980, what were the terms of your payment?

Judge NIXON. Just $9,500 to be—I was willing to pay it in whatever manner that he would direct, if it were reasonable of course. That had to be understood. There was no real discussion of that except what Carroll, Carroll Ingram had told me when he called me in the latter part of 1979, that the purchase price would be $9,500.

Ms. NAUGHTON. Was it your understanding, then, in February—well, let's say in all of 1980—that you were to give to Wiley Fairchild $9,500 cash up front, before the deeds would be executed?

Judge NIXON. I was willing to pay it however he wanted to, but I needed a little advance notice to borrow from the bank. As far as I knew, before Carroll Ingram told me that Wiley Fairchild was willing to carry the paper himself I was going to borrow from the bank and pay him cash, $9,500, yes.

Ms. NAUGHTON. And when did you come to learn that Wiley would carry the notes himself?

Judge NIXON. When Carroll Ingram called me to tell me he was bringing the instruments down, and I asked him why he hadn't given me more sufficient notice, as I had requested. I said, Carroll, remember, I asked you to give me a little more notice, and you're coming down—and I forget whether it was a day or two days—and I don't know whether I could arrange my financing in that period of time, and that's when he told me.

Ms. NAUGHTON. All right. So when you say it was when he was preparing the instruments, would that have been in or about February of 1981?

Judge NIXON. Latter part of February or first part of March of 1981. Yes, ma'am.

Ms. NAUGHTON. Judge, if you can——

Judge NIXON. When he called me? Yes, that's correct.

Ms. NAUGHTON. OK. If you could turn to your grand jury testimony, please, and that's Tab 23.

Judge NIXON. All right.

Ms. NAUGHTON. And I direct your attention to page 29, and I hope you have page numbers because my copy is not very good. There may be something that looks like a 28 at the top.

The question to you, Judge, is: The terms of the note, when were they arrived at? Would that be back in February 1980, or would it have been February 1981?

And you said back in 1980: "I have mentioned to Mr. Fairchild I was going to borrow the money to make payments, the best of my recollection, and I think he said something—this is in 1980—he said something about he would carry at 10 percent, and give me a reasonable time to pay them."

"And that was in—the notes reflect the time that he gave me later."

Judge NIXON. Yes. I see that.

Ms. NAUGHTON. All right. Now, it appears that you told the grand jury that Mr. Fairchild told you he would carry the notes back in 1980. Was that a false statement, Judge?

Judge NIXON. Carroll Ingram had told me, in the latter part of 1979, or the very first part of 1980, that that's what would be done. Now whether Mr. Fairchild repeated that when I came to his office to meet him, or not, I don't recall.

Ms. NAUGHTON. Now, what you are now saying, is that Carroll Ingram told you in 1979 that Wiley Fairchild would carry the note?

Judge NIXON. He told me—it was either in the latter part, as I testified, the latter part of 1979, or the very first part of 1980 when I talked to him. Oh, I'm sorry. No, Carroll told me when he called me in 1981. I'm sorry. This was a mistake, apparently, when I stated that.

Ms. NAUGHTON. So when you——

Judge NIXON. It was very difficult to reconstruct everything and at that period of time, Ms. Naughton.

Ms. NAUGHTON. So when you testified to the grand jury——

Judge NIXON. It was several—it was 4 years at that time, back.

Ms. NAUGHTON. So when you testified to the grand jury, then, that you were first told that Wiley would carry the notes in 1980, that was a misstatement?

Judge NIXON. Yes, ma'am. An honest misstatement.

Ms. NAUGHTON. When did you first learn what the interest rates would be on the notes that Wiley was going to carry?

Judge NIXON. When Carroll brought the notes down for me to sign.

Ms. NAUGHTON. That was the first you knew of the terms?

Judge NIXON. Yes.

Ms. NAUGHTON. And that was at 10 percent, is that correct?

Judge NIXON. That's correct.

Ms. NAUGHTON. What was the interest rate you could get at a bank for a personal, unsecured loan at that time?

Judge NIXON. I don't recall.

Ms. NAUGHTON. You were taking out notes at banks during that period of time, were you not?

Judge NIXON. 1980?

Ms. NAUGHTON. Yes, sir.

Judge NIXON. 1981? I'm sure I was, and I don't recall. Whatever you say it was would of course——

Ms. NAUGHTON. Well, Judge, if I were to tell you that we called the Congressional Credit Union and they looked at the minutes of their loan meetings during that period of time for an unsecured personal loan, and it was running about 15 percent, would you quarrel with that statement, or does that comport with your recollection?

Judge NIXON. I don't recall but I'm not going to argue that with you, of course.

Ms. NAUGHTON. Does that sound about right for 1980?

Judge NIXON. I really don't know.

Ms. NAUGHTON. Now the 3-year payment term, did you notice that when you signed the notes?

Judge NIXON. Are we talking about what?, 4 or 5 percent of $9,500? But go ahead. I'm sorry. Go ahead.

Ms. NAUGHTON. The 3-year payment term, did you notice that the notes were not due until February 1983 when you signed the notes?

Judge NIXON. Yes.

Ms. NAUGHTON. Did you notice that there was no payment schedule? That is, you did not have to pay anything until February of 1983?

Judge NIXON. Yes.

Ms. NAUGHTON. And I take it this was an unsecured loan, is that right?

Judge NIXON. Yes.

Ms. NAUGHTON. Was there any discussion of putting up any collateral for this loan?

Judge NIXON. No.

Ms. NAUGHTON. Judge, had you ever received an unsecured 10-percent loan with no payment schedule from any bank before?

Judge NIXON. I don't recall. I wouldn't want to tell you, one way or the other, without checking. I don't know. I'm not saying I have and I'm not saying I haven't. All I know is I did not set this interest rate. Apparently Mr. Fairchild did. I thought it was fair and I signed the notes.

Ms. NAUGHTON. To the best of your recollection, have you ever had a bank loan that was unsecured at 10 percent, with no payment schedule other than full payment at the end of 3 years before?

Judge NIXON. I don't know whether I have or not, Ms. Naughton.

Ms. NAUGHTON. Now, the checks you wrote back in payment of the note were all made out to W.R. Fairchild Company from a special—it says "special account."

Is that a separate bank account that you have from your—I imagine you have a joint checking account, is that correct?

Judge NIXON. That's correct.

Ms. NAUGHTON. And do you have a separate special account?

Judge NIXON. Yes. I did, then.

Ms. NAUGHTON. Why was that?

Judge NIXON. Well, of course, the joint account was used to write household checks, pay household bills, and what have you. My wife and I both wrote checks on it. That's one reason I had a special account, and I think my accountant had recommended that, my CPA, years before.

Ms. NAUGHTON. Why was that?

Judge NIXON. Well, so I'd know better what was in the account and we wouldn't both be drawing on that one account and not know what the other was writing.

Ms. NAUGHTON. And what was the purpose of the special account?

Judge NIXON. I think I just stated it.

Ms. NAUGHTON. But I mean, what types of things were you paying out from it and depositing into it?

Judge NIXON. At that time I don't recall, but it wasn't an account just set up to receive royalty payments from this, if that's what you mean. I know that much.

Ms. NAUGHTON. I am just asking, what was it for?

Judge NIXON. I don't know, except what I just explained to you.

Ms. NAUGHTON. All right. Other than receiving these royalty payments, what else did you use the account for?

Judge NIXON. I don't know, but I'm sure the records are available. I don't know.

Ms. NAUGHTON. Now the royalty checks you received from Fairchild and Fairchild-Windham, they went into this account, this special account, right?

Judge NIXON. I don't remember what account we put them in but I would assume that. Is that on the check?

Ms. NAUGHTON. The account numbers are the same, Judge. We have checked. If your recollection is different, please tell me.

Judge NIXON. Well, if that's the case, that's certainly what happened.

Ms. NAUGHTON. So basically you paid out of the same account that you were getting money from the royalty checks—you paid out the notes from, is that correct?

Judge NIXON. If that's what the records say.

Ms. NAUGHTON. Now I would also like to ask you something else about those checks. The checks that went to you—and they are exhibits, if you need to look at them—but the checks that went to you were paid out in this manner.

For the Wilkie and Rogers wells, they were paid from W.R. Fairchild Company because that is who signed the royalty deed to you.

The Ross well royalties were paid from Fairchild-Windham checks because that is who held the deed which is signed over to you, yet you paid all of the money to W.R. Fairchild Company. Do you know why you did that?

Judge NIXON. No, I don't. I guess it was just an error on our part, but we were paying them and getting credit for it, and it didn't—was not significant to me, no.

Ms. NAUGHTON. I wanted to ask you a couple of things about the notes.

Judge NIXON. I think—didn't the notes all—the notes were payable to Fairchild—the notes, all three notes were payable to Fairchild Construction Company Limited.

Ms. NAUGHTON. Did you ever question the discrepancy in the deeds and the notes?

Judge NIXON. No, not that I recall. I'm sure I would recall if I had.

Ms. NAUGHTON. So the notes may have been in error?

Judge NIXON. May have been. I didn't draw them. I didn't have a thing to do with drawing them. Either Mr. Fairchild's office did it, or whoever—Carroll Ingram or whoever, did it.

Ms. NAUGHTON. Isn't it true, Judge, that the notes were actually created after Skip Jarvis had complained to Wiley Fairchild that this looked too much like a gift, and you needed something in writing?

Judge NIXON. That's not true, and I want to know what you base that on, Ms. Naughton, because that's a serious allegation, and I want to know if you have any evidence that would support such a question as that. And I am not trying to be nasty about it or mean about it, but what's the basis for your question?

Ms. NAUGHTON. Judge, that is exactly——

Judge NIXON. Carroll Ingram has testified that he prepared them and brought them down to me at the same time, and I testified that they were brought to me at the same time.

Ms. NAUGHTON. And Mr. Jarvis testified, did he not, Judge, at your trial, that he challenged Mr. Fairchild and said that the royalty deeds looked too obvious, and only after that time were the notes produced to Mr. Fairchild's office staff?

Now that was the evidence at your trial, wasn't it?

Judge NIXON. Did you consider Mr. Jarvis a credible witness, because Mr. Weingarten said he gave no testimony against me, and said that he was completely incredible.

Ms. NAUGHTON. That was not the question, Judge. The question was: Didn't Skip Jarvis testify at your trial, that he had challenged Wiley Fairchild on the deed, and said it looked too obviously like a gift to you, and thereafter, Mr. Fairchild produced the notes to his staff?

Judge NIXON. I don't recall specifically but I wouldn't be surprised at anything Skip Jarvis said.

Ms. NAUGHTON. Do you know Skip Jarvis?

Judge NIXON. No, but I saw him testify about Mr. Fairchild fixing his automobile brakes, and how Mr. Wiley Fairchild's supposed to be altering the brakes on his truck so he would be murdered and killed, and all that, he testified to in the trial.

Ms. NAUGHTON. Do you know Skip Jarvis?

Judge NIXON. No, ma'am, except what I saw when I saw him testify in the trial.

Ms. NAUGHTON. Judge, was a part of the agreement that you had with Mr. Fairchild, that if the wells did not produce you would not have to pay on the notes?

Judge NIXON. Of course not. What do you base that question on, Ms. Naughton?

Ms. NAUGHTON. Judge, I think the chair would instruct you I do not have to give the basis for the questions. We are simply wanting to get the answers from you.

Judge NIXON. Well, you don't have to, but to ask a question without any basis in evidence I don't think is a fair question by anyone. But go ahead. I'm sorry. I don't mean to argue with you.

But, you know, I have a right to know, I think, and if there's nothing to support that, or if there is anything to support it I would like to know what it is, so that I may ask you about it.

Ms. NAUGHTON. Let's look at the deeds.

Judge NIXON. All right.

Ms. NAUGHTON. Tab 4.

Judge NIXON. OK.

Ms. NAUGHTON. Why don't we go to the second deed, just because the printing is easier to read, Judge.

Judge NIXON. All right.

Ms. NAUGHTON. And this would be the Marion County well. And it is a form deed, correct, with some typewriting in the blanks, right?

Judge NIXON. Appears to be.

Ms. NAUGHTON. All right. And the typewriting says, in the body of the deed: "This conveyance is to be effective from the first day of production," which means, I guess by its terms, that this deed was to be effective when the wells started to produce. Isn't that correct?

Judge NIXON. I don't know what it means. I've never seen that in a deed before, and I wasn't conversant with the oil and gas business.

Ms. NAUGHTON. Did you notice it at the time you were given the deeds by Carroll Ingram?

Judge NIXON. I really didn't.

Ms. NAUGHTON. Would this not, Judge, give you the right to collect royalties from, let's say, the Ross well, which produced oil before these deeds were actually signed?

Judge NIXON. I would think so, if that's what it says. But of course I didn't know that at the time. And the deeds became effective—once they were signed they became effective as of February 25, 1980. So there wasn't any necessity of having that clause in there because the effective date of the deeds preceded any production, even at the date you mentioned.

Ms. NAUGHTON. Well, of course, that is the point that Mr. Ingram made, but are you saying that is then a reason for backdating? That is a well had already been producing, that you would backdate to the time before the well was producing?

Judge NIXON. As I understand it, the deeds were dated back to conform with the time of the oral agreement, to more better—and merely establish the value of the minerals at the time of the transaction entered into, because so many things can happen to a well in the meantime.

And also, of course, to make it legally binding.

Ms. NAUGHTON. Wouldn't it have been legally binding if it were dated February 1981?

Judge NIXON. It wouldn't have been legally binding until it was signed in 1981.

Ms. NAUGHTON. All right. And had it been signed, February 1981, when it actually was signed, it would have been a legally binding document, correct?

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. And by the terms of this document itself, you would have been entitled to royalty payments from wells that were producing in 1980, correct?

Judge NIXON. I would assume so, and especially since the deed became effective before that time.

Ms. NAUGHTON. Well, I did not ask that. I asked if they had been dated 1981.

Judge NIXON. Yes.

Ms. NAUGHTON. Did you know, Judge, that Mr. Fairchild never actually carried on his books the debt you had to him, until 1982?

Judge NIXON. Of course not. No, ma'am. And I still don't know that myself, personally.

Ms. NAUGHTON. How did you know, Judge, when you filled out your disclosure statements, how to assign which notes to which wells?

Judge NIXON. I didn't, and I didn't think I needed to. There may have been some mention of it on perhaps the—I don't know whether the—I've tried to search my memory in that regard, and I don't recall. I've been asked that question before.

Ms. NAUGHTON. When?

Judge NIXON. I don't know. Some time along the line by my attorneys, I think.

Ms. NAUGHTON. Well, let's look for a minute at Tab 27.

Judge NIXON. All right.

Ms. NAUGHTON. And this is your personal financial statement, dated December 31st, 1982. And first, I have to ask you, Judge: For what reason was this prepared, this financial statement?

Judge NIXON. I don't know this far down the line, Ms. Naughton, for what specific reason this personal financial statement was prepared. What specific reason? I don't know. I know I prepared them from time to time for various reasons.

Ms. NAUGHTON. This was entered as an exhibit at your trial, is that correct?

Judge NIXON. I think so.

Ms. NAUGHTON. But I will ask you——

Judge NIXON. Yes, I see that it was.

Ms. NAUGHTON. —to take all the time you need, but there is a letter from an accountant, explaining the compilation of the figures. Does that refresh your recollection as to why this document was prepared?

Judge NIXON. It says it's presented in accordance with the requirements of the Federal Reserve Bank of Atlanta. I don't see anything else in there. If you would call my attention to any specific reason——

Ms. NAUGHTON. I do not know why they were prepared, Judge. I am asking you if you know.

Judge NIXON. No, ma'am, I don't know, either.

Ms. NAUGHTON. Could it have been for a bank loan?

Judge NIXON. I don't know. It could have been I guess. I don't know. I don't know.

Ms. NAUGHTON. Now I am going to direct your attention to towards the end—and these pages are not numbered—but it is an addendum to item number 11, and it is labelled "Other Assets."

Judge NIXON. All right.

Ms. NAUGHTON. Now just so that we are on the right page, this page begins "Oil, Gas And Mineral Interests." Have you got that? It lists five different oil interests you had in 1982.

Judge NIXON. Yes; yes.

Ms. NAUGHTON. Now you listed here what I assume were your investment totals in these various projects, is that correct?

Judge NIXON. Correct.

Ms. NAUGHTON. Yet, if you look, number two says: "Getty Oil Company, Rogers Well, Marion County," and "Wilkie Well, Total Investment, $9,500."

Yet in the next entry, we have Fairchild-Windham, the Ross well, and you list that investment as $4,500.

Well, we have already heard evidence, Judge, that all you invested with Fairchild, and Fairchild-Windham was a total of $9,500.

Yet on this document, you have claimed $14,000 of investment. Isn't that correct?

Judge NIXON. If you'll look on the cover sheet, or letter that you referred to previously dated February 18th, the last paragraph on the second line it said, "Estimated market values."

Ms. NAUGHTON. So you estimated the market value, then, of Wilkie and Rogers at $9,500, and the estimated value of Fairchild-Windham, the Ross well, at $4,500? Is that your testimony?

Judge NIXON. Let's see. That would be four wells, wouldn't it? Obeal County, Marion County.

Ms. NAUGHTON. Well, it seems that you have lumped in Wilkie and Rogers——

Judge NIXON. Oh, I see. Yes I'm sorry. Apparently that was a mistake by my accountants. I had changed accountants. My CPA had died suddenly of a heart attack, I think—when was this? A couple of years before, 2 or 3 years before, and apparently that was a mistake by my accountants. That's all I can figure, Ms. Naughton.

Ms. NAUGHTON. I mean, that is a mistake to the tune of $4,500, right?

Judge NIXON. Yes, ma'am; apparently so. Or that's the estimated market value of the wells. It doesn't say what I paid for them, though. But I don't know, I really don't know.

Ms. NAUGHTON. Well, it says here "investment." It doesn't say "estimated market value." It says "investment."

Judge NIXON. Yes.

Ms. NAUGHTON. And $9,500 was obviously what you invested for all three, and yet you added $4,500.

Judge NIXON. Apparently my accountants, Moore and Powell, CPAs, made a mistake with respect to that.

Ms. NAUGHTON. Did you review this before it was submitted to wherever it was submitted?

Judge NIXON. I don't know whether I did, or not.

Ms. NAUGHTON. Now how would your accountant know to assign the $4,500 note, which was the most expensive note, to the Ross well, which, by everybody's admission, was the least productive?

Judge NIXON. I can't answer that. That's one reason I hired the CPAs to do this for me.

Ms. NAUGHTON. Do you know whether or not your CPA checked with Mr. Fairchild, and found out that Fairchild's books indicated that that note, the $4,500, went to the Wilkie well on his books?

Judge NIXON. No, ma'am. I don't know that, one way or the other.

Ms. NAUGHTON. Now by the way, let's look, if we can, at the last page for a minute on that, and do you know whether these figures are accurate, and that is, income received in 1982 from these mineral interests that Wiley Fairchild sold you? For the Wilkie and Rogers well you have over $30,000 listed.

Judge NIXON. They have that wrong also.

Ms. NAUGHTON. That is wrong?

Judge NIXON. The Ross well is.

Ms. NAUGHTON. The Ross well says $17,846. That overestimates it, Judge, doesn't it, by about what?, at least $12,000? No, actually, at that time, probably at least $15,000.

Judge NIXON. They made a mistake there also. Yes, ma'am.

Ms. NAUGHTON. Judge, do you remember reviewing these documents?

Judge NIXON. I don't remember, no, and I admit to you, and to everyone, I'm a poor businessman. We were swamped under with cases, and I didn't pay as close attention to this as I should have, I guess. I don't know. I don't recall.

Ms. NAUGHTON. Judge, had you ever tried a case or sentenced anybody who had submitted false statements to a bank to obtain a bank loan?

Judge NIXON. I don't think I have, Ms. Naughton. I can't remember.

Ms. NAUGHTON. Now if we could look for a minute at the "Other Oil Investments," and I think this was reported at N-20. Do you have that in front of you, Judge?

Judge NIXON. Yes. I do.

Ms. NAUGHTON. All right. Was this a document that was prepared in preparation for your trial?

Judge NIXON. I don't know whether it was preparation for trial, or some aspect of this case; whether it was grand jury or trial. I think it was for trial, if I'm not mistaken.

Ms. NAUGHTON. And it was introduced as a defense exhibit, wasn't it?

Judge NIXON. I didn't understand.

Ms. NAUGHTON. Was it introduced at your trial as a defense exhibit?

Judge NIXON. I don't recall, but if you—whatever you say, I'll abide by whatever the record shows.

Ms. NAUGHTON. I do not have a sticker on it, and that is why I am asking.

Judge NIXON. I don't know.

Ms. NAUGHTON. You were at the trial and we were not, so——

Judge NIXON. Yes, ma'am, but I don't recall. There were so many exhibits, and they were put in such a way, so many times, by the attorneys, they didn't go through the process of one at a time, and what have you. So, I don't know.

Ms. NAUGHTON. Well, let me ask you this: Was this a document that was generated for these hearings or for your trial?

Judge NIXON. It was generated before the—it wasn't for these hearings.

Ms. NAUGHTON. Now I would like you to look, if you could—now these are the other oil and gas investments that you made in 1981. Pattison, which you testified to; the one in Louisiana Parish; and then Geo-Southern. Is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Now the Pattison Petroleum Company investment and the Louisiana, you have here as two separate investments, right?

Judge NIXON. That's correct.

Ms. NAUGHTON. But let's go back for a minute to Tab 27, which was the financial statement that you prepared, and it seems as though you have the Pattison and Clemens which you list separately on one exhibit as a lump investment in your financial statement, is that correct?

Judge NIXON. Well, that is one investment. That's Clemens well drilled by Pattison Petroleum Corporation.

Ms. NAUGHTON. All right. What is the $4,000 to Pattison Petroleum Corporation, then?

Judge NIXON. I guess that's the payments I made—I don't know—on that particular well.

Ms. NAUGHTON. All right. It says "Amount of Investment."

Judge NIXON. Yes. I guess——

Ms. NAUGHTON. All right. What I am asking: Are these two separate investments, or is it one investment that somehow you broke down into two payments, or something?

Judge NIXON. I think it's just investment of working interest in that well. I'm not sure.

Ms. NAUGHTON. Now which was the investment that you did with Mr. Stockett?

Judge NIXON. The Chevron Point Coupe Parish, Louisiana.

Ms. NAUGHTON. And do you know whether or not Mr. Stockett is a partner, or in business in any enterprises with Bud Holmes?

Judge NIXON. No, I don't think he is. If he is, I don't know about it anyway.

Ms. NAUGHTON. Do you know whether or not Mr. Stockett has any car dealerships?

Judge NIXON. Not to my knowledge.

Ms. NAUGHTON. Did you ever buy any cars through Mr. Stockett?

Judge NIXON. I bought two used automobiles from him in two different years, yes.

Ms. NAUGHTON. And when you say "used," were these floor models that were——

Judge NIXON. No. They were diesel Cadillacs. Both turned out to be lemons, that he had used in his motel business, I think, or had used personally. I don't know which.

Ms. NAUGHTON. Was that before or after you invested in these oil wells with him?

Judge NIXON. I think before, if I'm not mistaken. It could have been after. I don't know, one way or the other, but they're good friends of ours.

Ms. NAUGHTON. So even after he sold you these cars, you went and put in money in his oil project, is that right?

Judge NIXON. He didn't do anything to me intentionally. He didn't know they were lemons, I hope.

Ms. NAUGHTON. Did you tell him?

Judge NIXON. I might have.

Ms. NAUGHTON. Now here's what I'm confused about on that investment, Judge. On the N–20, the paper prepared probably for your trial, it lists your investment in Mr. Stockett's project as $9,814.00. Have you got that?

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. All right. And yet, down in your financial statement, Tab 27, Item 11, you list that investment as only a $1,000. Why is that?

Judge NIXON. I don't know. Apparently my CPAs did a lousy job with this.

Ms. NAUGHTON. Let's look at something else. On N–20——

Judge NIXON. It's underestimated, though, of course. It's not overestimated in the financial statement. It's underestimated by $8,000, approximately. So I certainly wasn't trying to deceive anybody into thinking it was more since it's listed much less.

Ms. NAUGHTON. Judge, to your knowledge, which is correct? Did you invest $9,000 or did you invest $1,000?

Judge NIXON. Yes, ma'am. I invested——

Ms. NAUGHTON. Nine?

Judge NIXON. Yes, nine. Almost $10,000.

Ms. NAUGHTON. And I assume you had borrowed that money and therefore would be owing that money, right?

Judge NIXON. Correct.

Ms. NAUGHTON. And so it would look like less money owed if you put down $1,000 as opposed to $9,000, right?

Judge NIXON. No, because I didn't show that I borrowed that much. That's listed on the investment part.

Ms. NAUGHTON. We'll get to the borrowing later.

Judge NIXON. All right.

Ms. NAUGHTON. Why don't I hold that question.

Judge NIXON. OK.

Ms. NAUGHTON. Let's look at Geo-Southern now. Now Geo-Southern Corporation, which is the one you eventually sold out, right?

Judge NIXON. Yes.

Ms. NAUGHTON. And you got your money, even, back, right?

Judge NIXON. Yes. That's the best—that's my best recollection of exactly what happened there.

Ms. NAUGHTON. Now you claimed on this document you prepared, N–20, that the investment was $10,985, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. And income royalties in 1982 of $2,759, is that correct?

Judge NIXON. That's what's listed.

Ms. NAUGHTON. And yet that is not listed anywhere in the financial statement, is it, Judge?

Judge NIXON. Well, the date of the financial statement is December 31.

Mr. EDWARDS. Judge, at this point, the committee will come to order for a moment. I believe that we ought to have about a 10-minute break. You have been sitting there for a couple of hours. So we will come back in 10 minutes.

[Brief recess.]

Mr. EDWARDS. The subcommittee will come to order.

Ms. Naughton.

Ms. NAUGHTON. Thank you, Mr. Chairman.

Now, Judge, I wanted to ask you about these other oil and mineral interests that you purchased in 1981, and I would like to speak about them all as a group. But if your answers would vary as to one investment versus another, please feel free to explain and expand on what I am asking.

How were these deals financed? You said that you borrowed money from a bank, is that right?

Judge NIXON. Bank loans.

Ms. NAUGHTON. Were they three separate loans, or one big loan?

Judge NIXON. Three separate, as far as I recall.

Ms. NAUGHTON. All right. And which bank?

Judge NIXON. I don't know.

Ms. NAUGHTON. Do you have any idea?

Judge NIXON. Not this long.

Ms. NAUGHTON. Could you provide the committee with that information?

Judge NIXON. I guess we could. Yes.

Ms. NAUGHTON. Do you know what the rate of these loans were that you used to finance these other oil deals?

Judge NIXON. No.

Ms. NAUGHTON. Do you have any idea?

Judge NIXON. No. I don't. It's 7 years ago.

Ms. NAUGHTON. Do you have an idea of the terms of the loans?

Judge NIXON. No. I don't.

Ms. NAUGHTON. You know, until today, had you made any effort to try to find these documents?

Judge NIXON. I haven't. I was never asked to, I don't believe.

Ms. NAUGHTON. Were these notes secured by property, or other collateral?

Judge NIXON. I don't know that, since I don't recall the details of them.

Ms. NAUGHTON. Did you pay all these notes off?

Judge NIXON. I would assume so.

Ms. NAUGHTON. And is some of the money with which you paid them off money you got from the Fairchild investments?

Judge NIXON. I don't know. Could have been.

Ms. NAUGHTON. Did you have to sign overriding royalty deeds for these investments? I mean, not sign them, but did you have them for these investments?

Judge NIXON. I assume I did.

Ms. NAUGHTON. Were any of them backdated to 1980?

Judge NIXON. Not that I recall, because they were never—we never had the situation arise, as it did in this case, where the oral agreement was made previously.

Ms. NAUGHTON. When were these agreements made?

Judge NIXON. I don't remember.

Ms. NAUGHTON. Were they made the date, where it says here, "Date of Investment"? Are those the dates that the agreement was reached for each of these investments?

Judge NIXON. I would assume so, but I don't know. I've never been asked to——

Ms. NAUGHTON. So you could have reached the agreement prior to these dates?

Judge NIXON. Well, if it was, I don't think it was long before.

Ms. NAUGHTON. Let's look at the items listed in Tab 26 which is your 1980 disclosure, which you signed in 1981, and let's look at the liabilities at that time. And that's I believe like the fourth, fifth page in. It is Roman numeral VI in the middle of the page. Do you see that, Judge?

Judge NIXON. Yes.

Ms. NAUGHTON. All right. And what I see there are four notes, is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Mississippi Bank, First Mississippi National Bank, Nixon Enterprises, and Fairchild Construction Company. Is that correct?

Judge NIXON. That's what it says.

Ms. NAUGHTON. And the first three are in amounts of $15,000 to $50,000, and the Fairchild is $10,000 to $15,000, is that correct?

Judge NIXON. That's what it says, yes.

Ms. NAUGHTON. Now of the three notes that are not Fairchild notes, do you know how much those were, exactly?

Judge NIXON. No. I don't.

Ms. NAUGHTON. Do you know what the terms of those notes were?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. Do you know what the interest rates were on those notes?

Judge NIXON. No.

Ms. NAUGHTON. Now according to this, you would have owed, I assume, in 1980—then if we take the smallest amount possible, it would be 15 times 3 which would be 45, plus the 10 or so to Wiley. And that would be about $55,000, at a minimum, $55,000, is that correct?

Judge NIXON. According to this.

Ms. NAUGHTON. Do you have any reason to believe this is incorrect?

Mr. STEWART. This is 1981. You said 1980.

Ms. NAUGHTON. Yes.

Judge NIXON. 1981.

Ms. NAUGHTON. Yes. Do you have any idea what your yearly salary was in that year?

Judge NIXON. 1981?

Ms. NAUGHTON. Yes.

Judge NIXON. No, but it could easily be checked.

Ms. NAUGHTON. Why don't you give us a range of what it was.

Judge NIXON. I guess it was in the $50,000 category, I would guess. That's a guess.

Ms. NAUGHTON. The note from Nixon Enterprises, could you tell us what Nixon Enterprises is.

Judge NIXON. It's a corporation solely owned by me. It was formed when I was practicing law. My accountant recommended we—my then-CPA recommended that, so that it would be for tax purposes.

Mr. CONYERS. Mr. Chairman, might I intervene with a couple of questions at this point, if counsel could suspend, momentarily.

Mr. EDWARDS. Mr. Conyers.

Mr. CONYERS. I just wanted to find out from Judge Nixon, whether you are still drawing your judicial salary at this time?

Judge NIXON. Yes, Congressman.

Mr. CONYERS. And is that $89,500?

Judge NIXON. Approximately. Yes, sir.

Mr. CONYERS. And you are serving a 5-year sentence term?

Judge NIXON. Yes, sir.

Mr. CONYERS. And you have been convicted of an offense that could be an impeachable one?

Judge NIXON. Yes, sir. I guess. I'm certainly——

Mr. CONYERS. And that it is the theory of your strategy, then, to resist an impeachment, and conclude your sentence and go back to the bench? Is that the idea?

Judge NIXON. Well, we have a—well, the only way, of course, I can be deprived of the judgeship, or that I could be terminated, is through an impeachment. Yes, sir. If that's what—we have a Rule 2255, a habeas motion for a new trial pending at this time. That's to be heard I think—we hope—in late summer, attacking the legality of the conviction.

Mr. CONYERS. So, then you would be the only jurist in American history convicted of an impeachable offense, serves time, paid during that period, and then returns to the bench. There is no precedent for that, that I know of. Is that correct? Or that you know of?

Judge NIXON. I don't know of any. But it's our contention that I am not guilty, and we are attacking the conviction at this time in the appropriate manner in the United States District Court with the 2255 motion.

Mr. CONYERS. Well, I just wanted to determine that. I had not known of the fact, and I suppose this may occur more times than I know of. I did not know that you could be serving time and drawing a salary at the same time.

Judge NIXON. Well, Congressman, I will have been on the Federal bench 20 years in two weeks, and it's my honest belief that I have been convicted illegally, that I should not be serving time in prison. I want to serve as, continue to serve as a United States District Judge.

The Constitution of the United States guarantees that right, unless I am impeached, and along with the office goes the salary, and that's our position.

Mr. CONYERS. I see. Well, I just wanted to make it clear in my mind. Thank you, Mr. Chairman.

Judge NIXON. Yes, sir.

Mr. EDWARDS. At this time it's appropriate to declare a brief recess so we can go and vote, and we will be right back within 5 minutes, I hope.

[Brief recess.]

Mr. EDWARDS. The subcommittee will come to order. I am sorry about the delay, and we might have a vote or two a little later. So let's move along. Ms. Naughton and Judge Nixon.

Ms. NAUGHTON. Thank you, Mr. Chairman.

Judge Nixon, I just had a couple more questions on the oil transactions, and then we will get on to something else.

The deeds themselves—and if you would like, you can turn to Tab 4 which has the deeds—when you got these from Carroll Ingram, did you notice that the date was 1980, as opposed to 1981?

Judge NIXON. Yes.

Ms. NAUGHTON. And it is your testimony that you asked him about that?

Judge NIXON. Yes.

Ms. NAUGHTON. Now, and of course you noticed that Mr. Wiley Fairchild had signed them, I gather? They were executed by him?

Judge NIXON. [Witness nodding.]

Ms. NAUGHTON. And you noticed on the second page the notary stamp, did you, where someone had notarized that Wiley Fairchild indeed signed this on the 25th of February 1980? Isn't that right?

Judge NIXON. I didn't notice it. I see it now, yes.

Ms. NAUGHTON. And the notarization says: "I hereby certify that on this day, before me, a notary public, duly authorized in the State and County aforesaid, take acknowledgements, personally appeared Wiley Fairchild," and so forth, "voluntarily signed, delivered this instrument."

Now, Judge, I assume that in your practice in Federal court you have received many affidavits, and declarations regarding pleadings and motion practice before your court. Is that true?

Judge NIXON. Yes.

Ms. NAUGHTON. And don't you assume, when you get something that is sworn and notarized, and a date affixed, that that is the date that, indeed, that witness, or whoever is attesting to, actually signed the document?

Judge NIXON. Yes.

Ms. NAUGHTON. Did you have any qualms about accepting a document that claimed to have been signed on February 25th, 1980, when, indeed, you knew it had not been signed until 1981?

Judge NIXON. I think I've explained that. No, I didn't notice the notarization and I wasn't responsible. They were already signed when they were brought to me.

Ms. NAUGHTON. Did you hear Carroll Ingram testify before us, that he doesn't know why the deeds had been backdated, that he never gave instructions to Mr. Fairchild to backdate the deeds?

Judge NIXON. I don't recall.

Ms. NAUGHTON. You do not recall that testimony?

Judge NIXON. I don't recall what he said with respect to that, but I do recall what he testified to about the reason they were dated back to conform with the date of the oral agreement.

Ms. NAUGHTON. Is it your—well, the record will speak for itself on Mr. Ingram's testimony. Now, getting to the 1984 check that you wrote in response to Billy Riley's request—well, I guess what you're saying is a computation was made by your attorney, Mr. Goodman, and you discovered that some interest had not been paid?

Judge NIXON. After we got Mr. Riley's request for the payment of interest back to 1980, we did what I told you we did, or what I stated on direct examination.

Ms. NAUGHTON. What I am confused about is the sequence of events. Was it the case that Mr. Goodman discovered the discrepancy, that you had not paid the interest? Or was it a fact that Mr. Riley first sent you a letter stating that you had not paid the interest?

Judge NIXON. I think Mr. Goodman had compiled the matter first, before I went before the grand jury. I think he had made that determination, and I guess out of the grand jury testimony, Mr. Riley realized they had not charged that interest. I don't know. That's guesswork on my part.

Ms. NAUGHTON. You do not know if Mr. Goodman and Mr. Riley were in contact with each other?

Judge NIXON. No. I don't.

Ms. NAUGHTON. So these might have been two unrelated events?

Judge NIXON. It might have.

Ms. NAUGHTON. Did you know that you had not paid the 1980 interest when you went into the grand jury in July of 1984?

Judge NIXON. I don't recall whether Mr. Goodman—I think on direct examination I did so testify, didn't I?

Ms. NAUGHTON. Well, my question is what is your recollection now, Judge? Did you, or did you not, before you went into grand jury, know that you had not paid the 1980 interest?

Judge NIXON. Let me double-check. Whatever I said in the grand jury, I think that's—I think Bill Goodman had made that determination before we went in.

Yes, I knew. I testified to that in the grand jury.

Ms. NAUGHTON. Now, Judge, was your check returned for insufficient funds?

Judge NIXON. No, ma'am, not that I know of. If it was, I don't know about it.

Ms. NAUGHTON. Do you have any idea where that stamp came from, that appears on the check that we looked at a couple of days ago?

Judge NIXON. No. I had never noticed that before.

Ms. NAUGHTON. All right. So to the best of your knowledge, it never came back to you and you never reissued another check, is that——

Judge NIXON. That's correct. It does say "processed and paid," doesn't it?, so I guess it was processed and paid.

Ms. NAUGHTON. Now, at this time, Judge—let's say between 1980 and 1983, how many checking accounts did you have?

Judge NIXON. At that period of time I don't know. I know I had household, and I had regular business, and special, and Nixon Enterprises. I think four, if I'm not mistaken.

Ms. NAUGHTON. Were they all with the same bank?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. Would you tell us what banks.

Judge NIXON. People's Bank, and First Mississippi National Bank, I think, at that time.

Ms. NAUGHTON. Now I believe it was your testimony before, that your secretary did a lot of the bookkeeping, that is, prepared some of the checks back to Fairchild, and made some of the deposits, is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. And did you rely on her to compute the interest, and so forth?

Judge NIXON. No. Make a call to Fairchild Construction, talk to the bookkeeper, if I had an amount of money that I wanted to prepay, as I did on two occasions, determine what interest—have them compute the interest to date of that—to that date, and I determined how much of the check that I paid was interest and how much was principal.

If I had, say, $5,000 available, and wanted to make a payment, and the interest was a $1,000—just using a figure—well, the $1,000 of it would go to interest and $4,000 principal.

Ms. NAUGHTON. And would your secretary do the banking for you?

Judge NIXON. Sometimes, at lunchtime, she would do that.

Ms. NAUGHTON. When did she prepare the checks? Was that at lunchtime as well?

Judge NIXON. I don't know.

Ms. NAUGHTON. And when we are talking about your secretary, this is your Government secretary, correct?

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. In your capacity as a judge?

Judge NIXON. Yes.

Ms. NAUGHTON. Now if we can turn for a minute to N-14 which is, I take it, a document prepared by Fairchild Construction and Fairchild-Windham in 1984, the same month that you testified in grand jury.

And it indicates, doesn't it, the amount of profit on the interest held by those entities in the wells that we're discussing, correct?

Judge NIXON. I think so.

Ms. NAUGHTON. All right. And they were quite profitable, weren't they?

Judge NIXON. Yes, ma'am. Two of them were.

Ms. NAUGHTON. Well, let's look. The Wilkie well produced a 2,343 percent profit, correct?

Judge NIXON. That's what it says. To Fairchild.

Ms. NAUGHTON. And you had three overriding royalty acres, correct?

Judge NIXON. Correct.

Ms. NAUGHTON. And the Ross well produced a 1,329 percent profit, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. And the Rogers well had produced an 8,313 percent profit, is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. So they were all successful to that extent?

Judge NIXON. Based on the original cost to me, yes. No, based on the original cost of the mineral interests to Wiley Fairchild, or Fairchild—whoever the owners were. But the percentages were based on the costs to Fairchild.

Ms. NAUGHTON. Judge, are you continuing to receive royalty payments now?

Judge NIXON. Very little, as I recall.

Ms. NAUGHTON. But checks are coming from Fairchild Construction and Fairchild-Windham?

Judge NIXON. I assume that's who they're still coming from. I don't know. We deposit them as they come in.

Ms. NAUGHTON. Now we also looked at a check the other day that's located at Tab 10 of the subcommittee's exhibits, from Fairchild-Windham to you, which indicated that it was payment for the Philyaw royalty.

Do you recall us looking at that the other day?

Judge NIXON. Yes. I do.

Ms. NAUGHTON. And when you received the checks, this check, in February of 1983, did you notice that this was for a different well than you had ever been on record as owning?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. You never noticed it?

Judge NIXON. The first I knew about it was here, when Mr. Fairchild testified in this hearing.

Ms. NAUGHTON. To your knowledge, that was deposited into your account, as were the rest, is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Judge, what did you do with the money that you made from the Fairchild investments?

Judge NIXON. Placed it in my bank account.

Ms. NAUGHTON. Has that money stayed there, or did you spend it on other things?

Judge NIXON. I'm sure I wrote checks on the account.

Ms. NAUGHTON. Do you know what you spent the money on?

Judge NIXON. No. I don't.

Ms. NAUGHTON. Now if we can turn our attention to Drew Fairchild's situation. When did you first learn that Drew Fairchild was Wiley Fairchild's son?

Judge NIXON. When I—I guess when I read something about it in the newspaper in the first part of 1953, I believe it—I mean, 1983, when I looked at it.

Ms. NAUGHTON. And was this the article which appears at Subcommittee Exhibit 20, the one that you mentioned in your direct examination?

Judge NIXON. It appears to be.

Ms. NAUGHTON. Well, Judge, if you could turn to that—and it's Tab 20—and tell us where, in that article, it mentions that Drew Fairchild is Wiley Fairchild's son.

Judge NIXON. I don't know. I didn't read it closely. I think I stated, when I testified, that I had gotten information from either the television, or newspapers, or other sources, or a combination. So someone may have just told me that when that article came out, and I saw it, and may have discussed it. But in any event, I was aware of that fact at that time, about that time.

Ms. NAUGHTON. Well, is it now your testimony that you were not aware of that from this article from some other source?

Judge NIXON. If it's not in there, I wouldn't be, of course.

Ms. NAUGHTON. When did you first hear about the drug bust at the Hattiesburg Airport in August of 1980?

Judge NIXON. I think this is the first time I knew anything about it, when I saw this article, or talked to someone, possibly, in connection with the article.

Ms. NAUGHTON. So, in January 1983?

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. And this would have been the first time you heard of the connection between Drew Fairchild and the drug bust in 1980?

Judge NIXON. Yes.

Ms. NAUGHTON. Did you ever discuss the 1980 drug case with Judge Cox?

Judge NIXON. No.

Ms. NAUGHTON. He is the judge that handled it, correct?

Judge NIXON. Yes. He was chief judge at the time, I think. Either he or Judge Russell.

Ms. NAUGHTON. Now I want to ask you this question about your procedures in terms of drawing indictments in that court.

Judge NIXON. Of what?

Ms. NAUGHTON. In Federal court in——

Judge NIXON. I understood that, but of what, with reference to indictments?

Ms. NAUGHTON. With reference to which judge gets assigned to which indictment.

Judge NIXON. Oh, which case? Oh, all right.

Ms. NAUGHTON. Right.

Judge NIXON. I thought you said drawing indictments.

Ms. NAUGHTON. Which judge draws which indictments.

Judge NIXON. Case. OK.

Ms. NAUGHTON. Which case draws which judge, whichever——

Judge NIXON. When you talk about drawing indictments, I thought you were talking about drawing up an indictment. Excuse me.

Ms. NAUGHTON. No, no. I am sorry.

Now, I am talking about your procedures, now, in 1980 and 1981. They may have changed since then, but I am asking specifically that time period.

Now we all know that Drew Fairchild was never indicted, Federally, right? And neither was Mr. Watkins?

Judge NIXON. That's what I've been told.

Ms. NAUGHTON. Had George Phillips gone ahead and sought an indictment for Drew and/or Mr. Watkins, would that have gone into the draw? That is, would another judge have been drawn?

Judge NIXON. I don't know who would have been drawn. We have a random selection process, and in criminal cases, even a more fail-safe one than civil, because once a grand jury has met and brought back indictments, numbers are put in a box, and a jury commissioner, a representative of the clerk's office, and I think a representative of the marshal's office, or U.S. Attorney—I don't remember which—is present, and they have one of the judges draw out of the box—they hold it up high—and the first number that is drawn is the first case that's assigned, and so on.

Ms. NAUGHTON. And at that time, 1980–1981, how many judges were there in the Southern District of Mississippi that could have been drawn?

Judge NIXON. Three.

Ms. NAUGHTON. Yourself, Judge Cox and Judge Russell, is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Now, taking you to the day of the phone call, for lack of a better reference point, which Bud Holmes claimed was made 14th of 1982 and which you claimed was March 11th of 1983. Did you see Carroll Ingram at all that day?

Judge NIXON. I don't recall because I don't recall much about that day, obviously.

Ms. NAUGHTON. Well, you were in court, I gather, in the morning, with the bank robbery case?

Judge NIXON. On May 14th, 19——

Ms. NAUGHTON. No, no. What I am talking about is——

Judge NIXON. March 11, 1983?

Ms. NAUGHTON. Yes.

Judge NIXON. I don't remember seeing Carroll that day.

Ms. NAUGHTON. What about Bud Holmes's office? You testified you never went by his office that day, is that correct?

Judge NIXON. Yes. I don't—yes, that's correct.

Ms. NAUGHTON. Did you meet a man named Fred Cook on that day?

Judge NIXON. No. I don't remember meeting any Fred Cook.

Ms. NAUGHTON. A football player?

Judge NIXON. I don't recall meeting Fred Cook.

Ms. NAUGHTON. Do you ever recall meeting Fred Cook?

Judge NIXON. I don't know whether I met him or not. I think I did some time, but I'm not sure.

Ms. NAUGHTON. Would that have been in Bud Holmes's office?

Judge NIXON. I don't recall where it was.

Ms. NAUGHTON. Now, on that day—you heard Mr. Fairchild testify before the committee, that the meeting between yourself and him was arranged by virtue of him calling, perhaps, your secretary, or you directly, before you met with him in his office.

I gather that that is contrary to your recollection of how you happened to be in his office, correct?

Judge NIXON. If he did, I don't recall it that way.

Ms. NAUGHTON. You do not recall your secretary ever giving you the message that Wiley Fairchild wanted you to stop by and see him?

Judge NIXON. I don't recall that. I don't recall Wiley Fairchild ever calling me, that I can recall, calling my secretary, or telling me that.

Ms. NAUGHTON. What time did your meeting with Wiley Fairchild take place?

Judge NIXON. I'd say early afternoon.

Ms. NAUGHTON. And you stated that Rodney Fairchild was present at the beginning and then Wiley kicked him out?

Judge NIXON. Yes.

Ms. NAUGHTON. I believe you testified that Wiley complained that someone else had not been indicted. Is that true?

Judge NIXON. Yes.

Ms. NAUGHTON. Do you recall who that was?

Judge NIXON. I never did recall the name, even after the names were mentioned to me.

Ms. NAUGHTON. Did you ever do anything about that complaint of his, that there was someone who should be indicted and never was?

Judge NIXON. No.

Ms. NAUGHTON. Now I gather that Mr. Fairchild complained about this alleged blackmail scheme that Bud Holmes and perhaps Carroll Ingram were perpetrating against him, right?

Judge NIXON. Yes.

Ms. NAUGHTON. And the blackmail was exactly what?

Judge NIXON. That's a good question. I never was quite sure what it was, but I assumed that what it was was— the way he mentioned it to me was the good Fairchild name being drug through the mud by the news media.

Ms. NAUGHTON. Was it being dragged through the mud because of Drew Fairchild's drug case?

Judge NIXON. I would assume so, but I don't know.

Ms. NAUGHTON. Is that what you assumed at the time?

Judge NIXON. I assumed it, yes.

Ms. NAUGHTON. And——

Judge NIXON. Or the handling of it.

Ms. NAUGHTON. So the blackmail was about the handling of Drew Fairchild's drug case?

Judge NIXON. Apparently so. I don't know what it concerned. He didn't go into any detail about that at all.

Mr. EDWARDS. We will have to recess for I hope not more than a few minutes. We have two quick votes, I hope.

[Brief recess.]

Mr. EDWARDS. The subcommittee will come to order. Ms. Naughton.

Ms. NAUGHTON. Thank you, Mr. Chairman.

Judge Nixon, we were at that point in your testimony when I was asking you about the events of March 11th, 1983 in which you testified you had spoken to Wiley and he had told you about the alleged blackmail scheme against him.

And this involved a blackmail scheme, he stated, by Bud Holmes, in connection with the handling of his son Drew's drug case.

Now, was it your testimony, Judge Nixon, that Wiley brought up the subject?

Judge NIXON. Of what?

Ms. NAUGHTON. Of the alleged blackmail scheme regarding Bud Holmes's handling of the Drew Fairchild drug case?

Judge NIXON. I don't know whether you'd call it a "scheme," but he stated what I said he did, yes.

Ms. NAUGHTON. And it was Wiley that brought up this subject?

Judge NIXON. Of course.

Ms. NAUGHTON. And he mentioned his son?

Judge NIXON. Yes.

Ms. NAUGHTON. Drew?

Judge NIXON. Yes.

Ms. NAUGHTON. Now if we can look at page 32 of your interview with the FBI, and that's at Tab 22, page 32. When asked the question: "Do you recall any knowledge of the case, meaning the Fairchild case, while you were dealing with Wiley Fairchild? No. And he certainly never brought it up? Not to my recollection. I think I would recall that."

Judge Nixon, isn't it true that, indeed, Wiley Fairchild did bring up the subject of his son's drug case?

Judge NIXON. Not while we were dealing with respect to the oil interests, no. Later.

Ms. NAUGHTON. Well, he brought up the subject of the blackmail, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. And the blackmail concerned the handling of his son's drug case, isn't that correct?

Judge NIXON. Not while I was dealing with Wiley Fairchild. The deal had been consummated in 1981.

Ms. NAUGHTON. Well, you were still continuing to receive royalty payments, correct?

Judge NIXON. Yes.

Ms. Naughton. And the terms of the deed were still in effect with Wiley Fairchild, correct?

Judge Nixon. Yes.

Ms. Naughton. And you indeed even had conversations with him a few months earlier regarding possibly being put into another well?

Judge Nixon. He mentioned something at that reception, very briefly, in October of 1982.

Ms. Naughton. All right. Is it your testimony, then, Judge Nixon, that your answer, "Not to my recollection, I think I would recall that," was accurate because Wiley mentioned Drew's case to you at a time at which you were not dealing with him?

Judge Nixon. Yes.

Ms. Naughton. Now I want you to look at the formulation of that answer. The question was: "And he certainly never brought it up?" And your answer was: "Not to my recollection. I think I would recall that."

You were not asked in that question, were you, Judge, if you discussed it with Wiley; just if he brought it up, correct?

Judge Nixon. We're talking about the same question?

Ms. Naughton. Yes.

Judge Nixon. Yes.

Ms. Naughton. Now let's look at the grand jury for a minute, and your counsel read it before. But the question I have is this, and that is the formulation of your answer.

When asked if you had ever discussed the case with Bud Holmes, you said, "No, not to the best of my recollection. I think I would recall it if he had."

And again, at page 50, when asked "Did Wiley Fairchild ever discuss the case with you?", you answered, "No, not to the best of my recollection. I think I would recall that if he had, believe me."

Judge, those are nearly identical formulations of the same answer, and my question to you is: Isn't it true that you had worked out that answer in your mind, so as to evade telling the grand jury about the blackmail scheme and the subsequent phone call from the farm?

Judge Nixon. No. It is not true.

Ms. Naughton. Were you aware of cases that held, if you stated "I don't recall," that perhaps you could have evaded prosecution, rather than flatly denying it?

Judge Nixon. No.

Ms. Naughton. Then why did not you just say "No"?

Judge Nixon. I don't know. Don't you—I just answer questions—if I don't recall something, I don't recall it, recall doing it. That's why.

Ms. Naughton. Well, is your testimony, then, that it could have happened, but you don't recall? Or that it didn't happen?

Judge Nixon. Just exactly what I said: I don't recall.

Ms. Naughton. So you were telling the grand jury that it could have happened, but you don't recall?

Judge Nixon. I didn't recollect, then.

Ms. Naughton. Now, in your conversation with Wiley, when he told you that he thought he was being blackmailed by Mr. Holmes in connection with Drew's case, would you agree that he was imparting to you some knowledge, some piece of information about that situation, that you did not know before? That is, an allegation of blackmail?

Judge NIXON. I'm still not sure exactly what Mr. Fairchild meant by it, to this date, but I just assumed, and the way he mentioned it to me, that he meant dragging the Fairchild name through the mud by the news media.

Ms. NAUGHTON. And the way that the case was being handled, he felt was an attempt to blackmail him, extort money from him, is that correct?

Judge NIXON. That's what he called it. Now, I don't know.

Ms. NAUGHTON. Was he telling you something new that you had not heard before?

Judge NIXON. What do you mean, exactly? Would you mind clarifying that.

Ms. NAUGHTON. Sure. When he told you he thought he was being blackmailed by Bud Holmes in connection with the way Drew's case was being handled, was that something new? Was this the first time you had heard such an allegation?

Judge NIXON. Yes.

Ms. NAUGHTON. So he was imparting to you some knowledge at least—whether it was correct, or not—that you had not known before, something you had not known before? Is that correct?

Judge NIXON. And I still don't know what he was imparting to me, but that's the first time he mentioned blackmail to me, yes.

Ms. NAUGHTON. In connection with Drew's case?

Judge NIXON. Bud Holmes's handling of it.

Ms. NAUGHTON. Bud Holmes's handling of Drew's case. Judge, would you say that——

Judge NIXON. I don't know whether it was Bud Holmes's handling of it, or it being drug through the mud by the news media. I'm still not exactly sure. I think different people could interpret it different ways, Ms. Naughton.

Ms. NAUGHTON. All right. You said you got the——

Judge NIXON. I assume that's what he meant, though.

Ms. NAUGHTON. You assume that's what he meant?

Judge NIXON. Yes.

Ms. NAUGHTON. Because you said you got the impression he wanted to talk to you, wanted you to talk to Bud?

Judge NIXON. Wanted me to pass that on. I got that impression. He never asked me to.

Ms. NAUGHTON. I assume Bud does not own TV stations or newspapers, so he could not control what the media was saying?

Judge NIXON. I assume that.

Ms. NAUGHTON. But he had control over Drew's drug case, correct?

Judge NIXON. I guess to a certain extent.

Ms. NAUGHTON. Well, he was the DA, right?

Judge NIXON. Yes, and it in court. It was before the Circuit Court.

Ms. NAUGHTON. Now, would you say, Judge, that "blackmail" is an untoward allegation, offense, activity?

Judge NIXON. True blackmail?

Ms. NAUGHTON. Yes.

Judge NIXON. Yes.

Ms. NAUGHTON. Directing your attention to page 20 of your interview, you were asked by Mr. Weingarten, and in connection with your conversation with Wiley Fairchild, "I guess what I'm asking you is whether or not you detected anything untoward from either—and then you interrupted, "Also—and that's as far as it goes—"Mr. Fairchild"—interruption. "Judge Nixon: Absolutely not. If I had, I'd have pulled back immediately and wouldn't have had a darn thing to do with it."

Now, given what you just told us, that blackmail is an untoward activity, when Mr. Weingarten asked you whether or not you detected anything untoward, by virtue of your dealings with Wiley Fairchild, you answered "Absolutely not."

Judge, given the fact that blackmail is an untoward activity, wasn't that an incorrect, or false response?

Judge NIXON. No, ma'am. If you go back to the page before, that question relates to whether I had an arm's-length transaction with Wiley Fairchild, and that was in 1980 and 1981.

The mention of the blackmail was in 1983, Ms. Naughton.

Ms. NAUGHTON. Well, his question is whether you detect anything untoward from—and then he's not allowed to finish his question, and you said, "Absolutely not." He does not limit it in this question, does he, to any period of time?

Judge NIXON. I think it relates back, because that's what we were talking about—the transaction. Whether I would have entered into that transaction if I'd have known anything about an alleged blackmail going on.

Ms. NAUGHTON. You admitted, didn't you, Judge, at the time of this interview, that you did recall, or you had it in your mind—you had not forgotten about the conversation with Wiley Fairchild and the subsequent phone call from the farm back to Wiley that evening?

Judge NIXON. Well, of course it was in my recollect, my mind. I knew it had happened is what I mean, but it wasn't foremost in my mind, at all, because of the reasons I've already stated. I thought it was nonsense. I thought it was a misunderstanding. It was apparently cleared up, and over with that evening, and I heard nothing more about it.

Ms. NAUGHTON. You stated that you did not believe the blackmail allegations, did not believe Bud Holmes was capable of it, and you told him—you told Bud because you were friends, and you wanted him perhaps to know about it, and maybe straighten out the situation? Is that a fair statement?

Judge NIXON. Yes.

Ms. NAUGHTON. And you later have said that there might have been some truth—you have learned later, that there might have been some truth to the fact that Bud Holmes was perhaps blackmailing Wiley, because of the fees to Porter.

Judge NIXON. Well, I'm not going to make that accusation or be that strong about it, but certainly it raises some suspicions——

Ms. NAUGHTON. All right. But of you were——

Judge NIXON. —when a district attorney has someone indicted, in his official capacity as a district attorney, to collect a fee for a lawyer friend of that particular person.

Ms. NAUGHTON. Is it your position that that is what Bud Holmes said in his testimony before this committee?

Judge NIXON. That's what he said in his testimony in trial, and I'll show it to you—I can find it—on cross-examination, and admitted that was a shameful act, and I think finally he did admit that again here, and that he had testified to that previously under oath.

Ms. NAUGHTON. Judge, isn't it more accurate to say that Bud Holmes said it may have been one of the factors why he indicted Drew, but he indicted Drew because, indeed, he felt him guilty of the offense, and would not have indicted him, had he not felt he was guilty?

Judge NIXON. The record will speak for itself, but I believe he admitted that was the primary reason, at least.

Ms. NAUGHTON. Now my question is this: If Bud Holmes was involved in some blackmail scheme, weren't you acting improperly by going straight to the target of this alleged scheme, and telling him that someone was making these accusations?

Judge NIXON. No, ma'am, because as I understood it, it was a question of the name being drug through the news media, and I didn't think that would even amount to blackmail, or course or any kind of crime, and I had no idea what Bud Holmes had done with respect to that indictment, or reason that he had gotten it or sought it from—got it from George Phillips, a U.S. Attorney, the case, and, no.

And I thought it was nonsense, I thought it was a misunderstanding, which it apparently was from everything that happened that night, and as far as I knew it was over with.

And I thought I'd be irresponsible to go around and start rumors like that, which were, based on my—based on what I observed, completely unfounded at that time.

Ms. NAUGHTON. Well, first of all, if you had only testified in grand jury—which we would agree is a secret proceeding, correct?—about the blackmail allegation, you would not be spreading rumors, would you? You would be testifying in secret session, right?

Judge NIXON. If you knew the things that came out of that grand jury that were in the newspaper while all this was going on, I don't know whether it was a secret session or not. That is, what was going on, and if someone was leaking a lot of stuff, that finally resulted in a gag order by the Federal judge.

Ms. NAUGHTON. Now it is true, is it not, that a witness in a grand jury is certainly free to go out and tell everyone what he, or she testified to in the grand jury. That is the case, isn't it?

Judge NIXON. It's my understanding.

Ms. NAUGHTON. So these, quote, "leaks" could easily have come from witnesses, correct?

Judge NIXON. Well, it depends on what leaks you're talking about. But I'll say one thing: the gag order related to the FBI agent in charge of the State of Mississippi, who was the subject of the motion, and the court almost held him in contempt, and he was sweating that out very much, and apologized to the court, in the record, and that resulted in a gag order and he was sort of taken to task by the U.S. District Judge.

Ms. NAUGHTON. What agent was that, sir?

Judge NIXON. Weldon Kennedy.

Ms. NAUGHTON. Did Weldon Kennedy ever tell you anything that was going on in the grand jury?

Judge NIXON. No.

Ms. NAUGHTON. Now, are you saying, Judge, that it would be improper for a witness before the grand jury to tell people what had gone on in the grand jury?

Judge NIXON. No, not necessarily, but Weldon Kennedy was not a witness, to my recollection, before the grand jury at any time.

Ms. NAUGHTON. Right. My question is not about Weldon Kennedy. It is about——

Judge NIXON. I don't know.

Ms. NAUGHTON. All right. Didn't you yourself, after you testified in grand jury—didn't your lawyer issue a press release with your authorization, specifically telling the public what you thought you had testified to in the grand jury?

Judge NIXON. My lawyer issued a press release, and the reason for that was to try to counteract some of the terrible publicity that was being printed in the news media and shown all over the television screens.

Ms. NAUGHTON. All right. But weren't you, by that press statement, telling people what had happened in the grand jury?

Judge NIXON. I don't know, but as I told you, I don't think it would improper for a witness—and I agree—to tell what he had testified to before the grand jury. There's no prohibition of a witness doing that.

Ms. NAUGHTON. That's not a leak?

Judge NIXON. No.

Ms. NAUGHTON. Now getting back to the Wiley Fairchild conversation, when Wiley mentioned his complaint to you about the blackmail, I gather he was upset by it?

Judge NIXON. He had to be quite upset. Mad.

Ms. NAUGHTON. And certainly you took it he had this on his mind, right? He had this on his mind—the fact that he thought Bud Holmes was blackmailing him in relation to Drew's case?

Judge NIXON. I assume he did. I don't think he'd have mentioned it otherwise.

Ms. NAUGHTON. Now I take it from your testimony earlier today, that your position is you did not, in your interview, tell the FBI, or Reid Weingarten, about the blackmail allegation and subsequent phone call, because you were not asked about it in the interview, correct?

Judge NIXON. Well, I didn't answer it because I wasn't asked about it, and I told you the reason I didn't volunteer it, and why didn't they tell me that Wiley Fairchild had complained about blackmail or extortion to them a few days before they ever came to interview me? Why wasn't I asked about that if they thought there was any substance to it, or wanted to know anything?

Ms. NAUGHTON. Judge Nixon, how would they possibly have known that you had anything to do with it, that Wiley had ever told you about the blackmail allegation?

Judge NIXON. I don't know.

Ms. NAUGHTON. That when Wiley complained to the FBI—and you can check the 302—he never once mentioned your name, did he?

Judge NIXON. No.

Ms. NAUGHTON. Now from Wiley, you learned that Drew's case——

Judge NIXON. But my point was: Why didn't they mention to me that they were investigating, looking into it, if an allegation had been made?

Ms. NAUGHTON. Well, Judge, is it your position that any time someone is investigating something they have to tell everyone from whom they are soliciting answers, exactly what they know before they ask for the answer?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. Now from Wiley, you learned that Drew's case had not—there was some problem. He was upset with the handling and how his name was being dragged through the mud.

And later you learned, at the farm, by virtue of the conversation Bud had with Wiley on the phone, that somehow it had been worked out. Is that a fair statement?

Judge NIXON. Wiley Fairchild told me he was satisfied.

Ms. NAUGHTON. And he told you that on the phone?

Judge NIXON. Yes.

Ms. NAUGHTON. And you gathered that he was satisfied in relation to what you had spoken about earlier that day, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. And would you agree with this statement, Judge. That in passing the comment that Wiley had—the complaint that Wiley had—passing that on to Bud Holmes, you were a connecting link between the two men, the connection between them to get this all straightened out? Would you agree to that?

Judge NIXON. Well, I passed it on, and thought it was straightened out that night.

Ms. NAUGHTON. Well, would you agree with that statement I made? That you were——

Judge NIXON. I guess so. I don't know what you mean by that, but I told you what was done.

Ms. NAUGHTON. I think you have testified to us, that the first time you ever learned of Drew's existence, or that Drew was Wiley's son, was in 1983, is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Yet on page 33 of the interview, when you were interviewed, you were asked about Redditt Fairchild, which is Drew's real name. And you said: "I don't know him by any name. I don't know him, never met him, don't know what he looks like."

"Question: Never met him?" "Answer: No." "Never saw him?" "Answer: No." "Question: Does he work with his father?" "Answer: I have no idea. Didn't even know he existed except from what I read about that and what you just told me."

Now it is true, Judge, that you knew he existed from what Wiley had told you about the blackmail scheme, right?

Judge NIXON. Yes.

Ms. NAUGHTON. But you did not add that to your answer, did you? You said you only learned of Drew in the paper, and from what Reid Weingarten had just told you, correct?

Judge NIXON. That's when I learned about it.

Ms. NAUGHTON. Well, what you said is, you did not even know he existed except what you read about, and what Reid just told you. But you also knew he existed from what Wiley told you regarding his complaint about how Drew's case was being handled?

Judge NIXON. Wiley's complaint was in March 1983, after the newspaper article, and whoever mentioned to me at that time that he was Wiley's son.

Ms. NAUGHTON. But your answer is you did not know he existed except from news articles. But there was another reason you knew he existed, and that is because you had spoken to Wiley about his case?

Judge NIXON. I'm talking about the first time I knew he existed, Ms. Naughton.

Ms. NAUGHTON. Well, that is not the question. The question was actually does he work with his father, and you volunteered you did not even know he existed, except from what you have read about that, and what Reid had just told you.

Judge NIXON. I didn't, up until that time, and I still didn't know whether he worked with his father at any time. I knew he wasn't working for him from what Wiley told me at that March meeting in his office.

Ms. NAUGHTON. Now when you to Mr. Fairchild and he made these allegations of the blackmail to you, and you said you got the impression he wanted you to speak to Bud Holmes about it, why didn't you just tell him—look, Wiley, I told you I would help you if I could, but this is just one of the times where I do not feel I can, and leave it at that?

Judge NIXON. He didn't ask me any—to help him.

Ms. NAUGHTON. Well, you said you got that impression. Why didn't you just nip it in the bud and tell him you could not do anything about him and didn't want to hear about it?

Judge NIXON. He didn't ask me, and when I left there, I didn't have any intention of mentioning it, and I did later, when I went out there, as I've testified previously.

Ms. NAUGHTON. Now at Bud Holmes's farm, was his wife home?

Judge NIXON. Well, you mean his wife now? He wasn't married at that time. He was in between.

Ms. NAUGHTON. Was he living with Marsha at the time?

Judge NIXON. I don't know.

Ms. NAUGHTON. Well, was she present?

Judge NIXON. I don't recall. I've already testified, I don't recall whether she was there or not.

Ms. NAUGHTON. Was anyone else there?

Judge NIXON. I've already testified: I'm not sure whether she was there, I'm not sure whether Haskell was there, the gentleman who worked for the Holmes family a long time. I don't recall.

Ms. NAUGHTON. Do you remember what Bud was wearing?

Judge NIXON. No.

Ms. NAUGHTON. Did you do anything else, other than have a drink and listen to the records? In other words, did you watch a game on TV, or did you engage in any other kind of activities?

Judge NIXON. Had a drink; a couple of drinks.

Ms. NAUGHTON. That was Royal Salute?

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. Was Bud already home when you arrived?

Judge NIXON. I don't know whether he was there first, or I was there first.

Ms. NAUGHTON. Other than perhaps talking about the football draft, can you think of any other subjects you discussed with Bud on that occasion, other than, obviously, the one subject of this hearing?

Judge NIXON. No. I don't.

Ms. NAUGHTON. You mentioned you may have discussed the football draft. Do you recall exactly what you discussed about it?

Judge NIXON. No. I don't. I say I think we probably did about that time. I'm not specific in that either. But every time, just about any time you were with him, we'd discuss football, pro football, or some of the players he represented, or the—I said it was about draft time then, I think, so it's possible we discussed the draft. I don't know.

Ms. NAUGHTON. Now I take it there came a time where he went to the telephone and placed a call. You weren't paying much attention, is that correct?

Judge NIXON. That's correct.

Ms. NAUGHTON. And how did he get you over to get you to the telephone?

Judge NIXON. He called me. He hollered.

Ms. NAUGHTON. And did he tel you who was on the phone?

Judge NIXON. When he handed me the phone, that he had talked to Wiley Fairchild.

Ms. NAUGHTON. Did Wiley identify himself?

Judge NIXON. What do you mean, did he identify himself?

Ms. NAUGHTON. Did he say hi, judge, this is Wiley?

Judge NIXON. No. I don't recall that he said that.

Ms. NAUGHTON. Did you ever hear Bud Holmes giving you credit for settling the case, or settling the dispute that they were having?

Judge NIXON. No.

Ms. NAUGHTON. You testified——

Judge NIXON. I didn't hear any of his conversation with Wiley Fairchild that night.

Ms. NAUGHTON. Anything?

Judge NIXON. No.

Ms. NAUGHTON. Was there a pause in the period in which you came up to the phone? Did they just stop talking until you got to the phone?

Judge NIXON. He called me over and handed me the phone, and said here, Judge, talk to Wiley Fairchild.

Ms. NAUGHTON. Well, he was not conversing with the judge, then, while you were walking to the phone, is that correct? Was not conversing with Wiley—I am sorry—while you were walking to the phone?

Judge NIXON. Not while he was handing me the phone.

Ms. NAUGHTON. Now you testified earlier that you were in trial. You testified that you were disgusted, I guess, with Bud, and that you felt you were caught in the middle. Why did you feel you were caught in the middle?

Judge NIXON. What I said was I didn't appreciate his calling me over there and not telling me he was calling Wiley about this, and handing me the telephone cold. I just didn't think that was the right thing to do.

Ms. NAUGHTON. Why?

Judge NIXON. Well, I thought he would at least let me know. Obviously, I just didn't like it.

Ms. NAUGHTON. Why not?

Judge NIXON. Well, I don't think you would have either, under those circumstances.

Ms. NAUGHTON. Well, that is not the question. Why didn't you like it?

Judge NIXON. Because I didn't.

Ms. NAUGHTON. Why not?

Judge NIXON. I didn't like it. I don't know how to tell you other than I didn't think it was a fair thing to do. I didn't like that.

Ms. NAUGHTON. Did you not like it because you did not know who was on the phone?

Judge NIXON. No.

Ms. NAUGHTON. You knew it was Wiley?

Judge NIXON. Well, that's what Bud said, and then when I talked, it sounded like him, but he was slurring pretty good, and I assumed it was.

Ms. NAUGHTON. Did you not like it because you did not want to speak to Wiley?

Judge NIXON. No, not particularly, it wasn't that. I told you why.

Ms. NAUGHTON. Well, no, that is why I kept asking. That you said you did not like it, but I do not understand why you did not like it.

Judge NIXON. I've told you the best way I know how, Ms. Naughton. Really.

Ms. NAUGHTON. Please, one more time. Why didn't you like it?

Judge NIXON. Because I didn't like being called over there cold, not knowing he was going to call him about that matter, and putting me on the telephone with him.

Ms. NAUGHTON. Did you feel you had been put on the spot?

Judge NIXON. I don't know about "put on the spot," but I didn't like that being done to me, and I don't think anybody would.

Ms. NAUGHTON. Why didn't you just refuse to talk to him?

Judge NIXON. Why should I refuse? I mean——

Ms. NAUGHTON. Well, you said you did not like it.

Judge NIXON. Well, I didn't. I didn't like it.

Ms. NAUGHTON. Then why didn't you just refuse?

Judge NIXON. What do you want me to do? Tell him I don't want to talk to him? No, I wasn't going to do that, at that stage.

Ms. NAUGHTON. All right. So your dislike was not so strong that you were not going to talk to Wiley, is that correct?

Judge NIXON. I was disgusted, being treated that way.

Ms. NAUGHTON. In your testimony, it stated that you were embarrassed when Wiley made the allegation of blackmail, and that you got out of there as fast as you can. Do you recall that testimony?

Judge NIXON. I don't know whether you'd call it "embarrassed." I might have used the word, "embarrassed," but I was quite shocked to—and upset. Here was this man, apparently—this elderly man, apparently sincere in what he was stating—whatever that was—whatever he called "blackmail" and I thought it's what I described to you—talking about two long-time friends of mine, Bud Holmes and Carroll Ingram, accusing them of blackmail, and——

Ms. NAUGHTON. I am sorry. Are you done?

Judge NIXON. Go ahead. That's all.

Ms. NAUGHTON. On page 1679 of your trial testimony, you said: "It was very embarrassing, to say the least; very shocking."

"Why was it embarrassing? I don't know what to say. I didn't say anything."

You earlier said: "He was not making a formal complaint to me as such and gave no details, and I wanted to get out of there."

Now, my question is: Why is it, if you thought that Wiley was talking nonsense, and you did not believe there was anything to it, why was this at all embarrassing and why did you want to get out of there?

Judge NIXON. I believe I just stated that. I thought the man was sincere and he was upset, he used the word, "blackmail", and I thought it was nonsense. What was I supposed to do—sit there and argue with him?

Ms. NAUGHTON. But why be embarrassed about that?

Judge NIXON. Well, maybe I didn't use the correct word, but I said I was shocked.

Ms. NAUGHTON. Were you embarrassed?

Judge NIXON. Well, I don't know whether "embarrassed" would be the correct word to use, but it's a play on words, Ms. Naughton. I think you know what I'm talking about, how I felt. I've expressed that already.

Ms. NAUGHTON. Well, my question is, did you feel embarrassed?

Judge NIXON. I don't know.

Ms. NAUGHTON. Now you also testified, at page 1686, that "if you had to do it again you would not have passed on the complaint to Bud."

Judge NIXON. Not in view of what has resulted from that. Yes, ma'am.

Ms. NAUGHTON. Given that you state there was nothing wrong in passing it on——

Judge NIXON. That's correct.

Ms. NAUGHTON. —why would you not do it again?

Judge NIXON. And I still say there's nothing wrong. Are you—well, I'm not going to answer that with the statement I was going to. Obviously, because of what it's come to.

Ms. NAUGHTON. Well, Judge, what you were convicted of was lying about discussing the case with Bud Holmes and saying you had never discussed it with any State prosecutor. Now what——

Judge NIXON. The question was whether he discussed it with me, to be perfectly correct about it.

Ms. NAUGHTON. So you were not indicted and convicted for passing on a blackmail complaint to Bud Holmes, correct?

Judge NIXON. [Witness nodding.]

Ms. NAUGHTON. Then why would you have testified that you would not do it again, you would not pass on the complaint again, if you had to do it over?

Judge NIXON. Look where we are. Look what's happened.

Ms. NAUGHTON. Now do you remember what day of the week this occurred? Was it a week day?

Judge NIXON. I think it was Friday.

Ms. NAUGHTON. Did you have your own car?

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. And when you go to Hattiesburg, do you normally have your own car?

Judge NIXON. Yes.

Ms. NAUGHTON. Now this is your personal vehicle and not a Government vehicle, correct?

Judge NIXON. Correct.

Ms. NAUGHTON. And do you get reimbursed by the Government?

Judge NIXON. Mileage, yes.

Ms. NAUGHTON. So you fill out a voucher, or your secretary fills it out, you signed it and you get reimbursed, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Do you bring your staff, anybody from your staff, normally, when you go to Hattiesburg?

Judge NIXON. It depends on how long we're going for, and what's going to take place up there, and what have you; but normally, my staff didn't travel with me. They traveled together in another vehicle.

Ms. NAUGHTON. Do you recall, on this occasion—we are talking about the day of the phone call from the farm—whether or not your staff accompanied you to Hattiesburg?

Judge NIXON. No. It would have been very unusual for—you say accompanied me. In my car, you mean?

Ms. NAUGHTON. Well, let's ask it both ways. First, in your car?

Judge NIXON. I doubt that. It would have been extremely unusual.

Ms. NAUGHTON. Would they have been there for the bank robbery trial?

Judge NIXON. Some of them probably would have been.

Ms. NAUGHTON. Now at the farm, when you told Bud Holmes about the complaint, and he told you Wiley's crazy and got a bit upset about it, was it your testimony that Bud told you that it had been settled, or it had all been worked out, and what is he talking about, something to that effect?

Judge NIXON. At the end there, when he went into the tirade about Wiley Fairchild, after I stopped him from discussing the case with me, kept him from doing it.

Ms. NAUGHTON. But he at least told you it had all been worked out, right? And you assumed he was talking about Drew's case?

Judge NIXON. I didn't know what he was talking about. That's what I assumed, of course.

Ms. NAUGHTON. So he talked to you about it to that extent, that he told you he thought it had all been settled, right?

Judge NIXON. Yes, before the phone call. Yes.

Ms. NAUGHTON. Now you testified that you thought the focus of the investigation was on the imbalance in the oil investment and its return with Wiley, and the handling of the Drew Fairchild case from Federal court, or Federal jurisdiction—it was not in court—to State court.

Judge NIXON. And the connection.

Ms. NAUGHTON. And the connection.

Judge NIXON. If any.

Ms. NAUGHTON. Now directing your attention to page 38 of the interview, didn't Mr. Weingarten say: "Well, that's loose, frankly, and we're obliged, by the information, to look at it from top to bottom, from the bust in August 1980 until today." And he is of course referring to the Drew Fairchild case. From top to bottom. Is that an accurate statement of what he told you?

Judge NIXON. I guess it is, if it's printed there.

Ms. NAUGHTON. All right. So he did not narrow this focus, at least, certainly in this passage, to simply looking at why it was passed from Federal to State hands, correct?

Judge NIXON. Well, I take this means he was looking at this, what the focus was, from top to bottom, to determine whether there was any imbalance, whether there was any influence by me with respect to the case on the Federal level, and whether there was any connection between it—that's what I gather the "top to bottom" means. Thoroughly.

Ms. NAUGHTON. Judge, why would it matter what you thought the focus of the investigation was, when you answered your question?

Judge NIXON. Because I think that's the essence of a perjury charge, is what's in the mind of the answerer, or the one being questioned.

Ms. NAUGHTON. I am asking you now——

Judge NIXON. Whether he intends to deceive, makes a knowing, false statement with intent to deceive.

Ms. NAUGHTON. But if I ask you is today Tuesday, is it your position that you have to know the reason I am asking in order to answer correctly whether it is Tuesday or not?

Judge NIXON. No.

Ms. NAUGHTON. Now you have also noted that the Government never asked you in your grand jury testimony specifically about the call from the farm, and the blackmail allegations, correct?

Judge NIXON. Yes. Correct.

Ms. NAUGHTON. Judge, how could the Government have asked you about a phone call that occurred if they never knew it occurred at the time you were in grand jury?

Judge NIXON. I didn't say they were obligated to ask me that question. I said I was never asked the question, and I wasn't.

Ms. NAUGHTON. Aside from specifically asking you about a phone call, which at that point they did not know had occurred, what question was it, by the Government, that would have elicited the information you have about your conversation with Wiley, and the subsequent with Bud Holmes?

Judge NIXON. I don't know.

Ms. NAUGHTON. Were you aware that you were one of the first witnesses to be heard by the grand jury?

Judge NIXON. I think I was.

Ms. NAUGHTON. And that was the first day they were convened, isn't that correct?

Judge NIXON. I think so.

Ms. NAUGHTON. And you stated you wanted to testify in order to clear things up, right?

Judge NIXON. Yes.

Ms. NAUGHTON. Judge, why did you tell the grand jury that——

Judge NIXON. I don't know about to clear things up, but to demonstrate I wasn't guilty of a crime.

Ms. NAUGHTON. So, at that time, did you think you were the subject of the investigation?

Judge NIXON. I didn't know. I certainly knew it was very possible, I guess, by virtue of what Mr. Weingarten said. I didn't think they'd be down there taping me, and questioning me about all this, if I wasn't at least some—a subject. I didn't think——

Ms. NAUGHTON. And Judge, you stated earlier in your direct testimony, that you prepared part of your testimony. I gather that was your final summation statement——

Judge NIXON. Yes, ma'am.

Ms. NAUGHTON. —that appears on pages 75 and 76 of the transcript?

Judge NIXON. Yes.

Ms. NAUGHTON. Can you tell us which parts of those statements you prepared in advance.

Judge NIXON. I tried to find the written text after all this happened, and I never could find it. I wish I could have.

Ms. NAUGHTON. Do you have an independent recollection of which parts you prepared?

Judge NIXON. Let me see it. Let me look at it. If you'll give me a few minutes.

Ms. NAUGHTON. Sure.

[Pause.]

Judge NIXON. I don't know whether I can say precisely, but I'd say down through, probably through line 5 on page 77, anyway. I could have ad libbed some, too. I don't know.

Ms. NAUGHTON. And for the record, are we starting at page 75, where you are asked if you have anything you want to add?

Judge NIXON. Yes.

Ms. NAUGHTON. Now why did you plan on, and, indeed, tell the grand jury that at that very same time you were supervising another grand jury that was sitting at the same time?

Judge NIXON. Well, that might have been part of the ad lib. I don't know. Where is that, please, ma'am?

Ms. NAUGHTON. It is at the very beginning of your summation. You see, you say at the bottom of 75: "I've always thought everyone should do that, and that goes for the grand jury over which I'm supervising right now, the other grand jury, Federal grand jury that's sitting at this time."

Judge NIXON. I guess because it was true.

Ms. NAUGHTON. All right. Did you say that, Judge, in an attempt to influence these grand jurors, that you had control over some other grand jury that was empaneled?

Judge NIXON. Certainly not.

Ms. NAUGHTON. You also stated, on page 75—if we can go back for a minute—that you had given them, quote, "all the information that I have, and that I could."

Judge, you hadn't told them, had you, about your conversations with Wiley and Bud Holmes regarding the blackmail allegations surrounding Drew Fairchild's case, had you?

Judge NIXON. I hadn't been asked about it, and I've already answered that question several times.

Ms. NAUGHTON. I am not asking if you had been asked about it. I am asking you: When you said that you had given the grand jurors "all the information that I have, and that I could," you indeed had not, had you?, because you had not told them about your conversation with Wiley and your conversation with Bud?

Judge NIXON. That didn't relate to the Drew Fairchild case itself. It related to blackmail, which turned out to be nothing, which we thought was nothing, which was apparently resolved, and that's the same thing. Same answer as I've given before, Ms. Naughton.

Ms. NAUGHTON. And you further told them: "I had nothing to hide or nothing to withhold, and I brought everything that you have asked me to bring." Correct?

Judge NIXON. That's correct.

Ms. NAUGHTON. But you were withholding information about the phone call, weren't you, Judge?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. Did you tell the grand jury about the phone call?

Judge NIXON. No. I wasn't asked about it, and I told you why I didn't volunteer it—because I didn't think it amounted to anything, and I thought it was all resolved. I thought it was nonsense, and it would have been irresponsible, I think, for me to bring that back up.

Ms. NAUGHTON. Well, when you say it would have been irresponsible, let me ask you this question. If you had told them about the blackmail charge, and then simply told them you thought it had no basis, it was an allegation that was immediately straightened out, it had no basis in fact, and, as a matter of fact you had disregarded it and it was not important, wouldn't that have been the whole truth, Judge?

That would not have been spreading rumors or have been irresponsible, would it?

Judge NIXON. Well, I think it would have been irresponsible to bring something like that up that never amounted to anything.

Ms. NAUGHTON. Well, couldn't you tell the grand jury that you didn't think it amounted to anything?

Judge NIXON. That wouldn't necessarily end the matter, of course.

Ms. NAUGHTON. Well, that was not up to you.

Judge NIXON. If that's what you mean.

Ms. NAUGHTON. Well, that was not up to you, was it?

Judge NIXON. No, and I wasn't trying to judge that fact. I thought it had been resolved. I thought there was nothing to it and I thought it was over with. Now, really, I didn't think it was blackmail, to begin with. I mean, dragging the name through the news media, that's not blackmail, unless you're trying to get some money for it or something.

But it was a terrible allegation to make, and I didn't know—I thought it was nonsense but—and I thought it was simply a misunderstanding that could be cleared up, and it was, apparently, that night, and over with.

Ms. NAUGHTON. But you knew the grand jury was looking into any connection between your oil dealings with Wiley Fairchild and the handling of Drew's case, correct?

Judge NIXON. And there was none, yes.

Ms. NAUGHTON. You knew that is what they were looking into?

Judge NIXON. Yes.

Ms. NAUGHTON. And you had had a conversation with Wiley Fairchild in which he had made these allegations connected to Drew's drug case, and you did not think it relevant for that grand jury to know about that conversation?

Judge NIXON. I've answered that several times. I don't know how else to answer it, Ms. Naughton.

Ms. NAUGHTON. Now I want to ask you something else about that answer. You said "I have nothing at all to—and then dash—"had nothing to hide, or nothing to withhold."

I want to ask you: Was there a reason you changed from saying "I have nothing at all" to hide, from I had nothing at all to hide?

Judge NIXON. I don't recall any reason.

Ms. NAUGHTON. Now I want to ask you about something else. You mentioned that you had it in your mind when you testified, that in order to prove a gratuity the Government had to prove an official act, correct?

Judge NIXON. That's my understanding of the gratuity statute.

Ms. NAUGHTON. All right. Yet, when you made your statement at the end, you stated, quote: "Now I have had nothing whatsoever, officially or unofficially—or unofficially—to do with the Drew Fairchild criminal case, in Federal court or State court." Correct?

Judge NIXON. I didn't have anything to do with it in the court, with it in the courts, either court.

Ms. NAUGHTON. All right. And is it your testimony that you had nothing unofficially to do with the handling of the case?

Judge NIXON. In court, I didn't. It wasn't—I had nothing to do with it being steered from Federal court to State court; nothing to do with it not being prosecuted in Federal court.

Ms. NAUGHTON. Is it your testimony you had nothing to do with it unofficially being passed to files?

Judge NIXON. Correct. And I didn't.

Ms. NAUGHTON. Judge, is it still your position that the questions posed to you in the grand jury were ambiguous?

Judge NIXON. The question that—subject of, count what?

Ms. NAUGHTON. Count three.

Judge NIXON. Count three?

Ms. NAUGHTON. Yes.

Judge NIXON. In one context of the word it was ambiguous, yes, because I considered it to relate to the Federal court matter, and I considered discussion to be something different—I considered discussion to mean a meaningful discussion of something, as a judge and a lawyer, and there was no discussion at all of the Drew Fairchild case.

The only discussion—and we wouldn't consider that a discussion—the only complaint was the blackmail situation.

Ms. **Naughton**. Now I have a question as it relates to the instigation. Once the investigation began in the spring of 1984, some time thereafter, did you ever tell Bud Holmes—this probably would have been early 1985—that you had learned that he was the one who was going to be indicted and that would be over the allegation made by Wiley Fairchild?

Judge **Nixon**. No.

Ms. **Naughton**. Did you ever hear anything like that from any Federal employee? Did you ever hear that Bud Holmes was going to be indicted by any Federal employee?

Judge **Nixon**. Not that I recall, no.

Ms. **Naughton**. Were you ever told any grand jury information by any current or former Federal employee?

Judge **Nixon**. I don't know what you mean by "grand jury information." What are you talking about? I don't recall any such, but I don't know what you're talking about.

Ms. **Naughton**. Well, I'm asking did you ever get——

Judge **Nixon**. If you'd be more specific. No, I don't recall any, but if you would be more specific I'll be happy to try to answer your question.

Ms. **Naughton**. Now, going to the date of May 14th, 1982, which became a controversial date at your trial. At trial, you testified that you were not in Hattiesburg on May 14th, 1982 for, quote, "one minute," and that you were positive you spent the day in chambers.

Yet you also testified that you had spent a great deal of effort trying to find out if you were in Hattiesburg on that date, isn't that correct?

Judge **Nixon**. Yes.

Ms. **Naughton**. Well, Judge, why did you testify that you were positive, if, indeed, you had to do investigation to find out if, indeed, you were there?

Judge **Nixon**. Well, after checking all—with everyone we did, I knew of no reason I would have been, and the last thing I knew I was in Biloxi, and certainly if I had anything to hide I wouldn't have mentioned dental appointments in my answer. I would have—that I would have come to Hattiesburg for the day for a dental appointment or a doctor's appointment.

And we checked with Dr. Fayler, and the Government had Dr. York's record.

Ms. **Naughton**. And you testified you didn't check, that you didn't ask Dr. York because you knew the Government had his records, correct?

Judge **Nixon**. No, I didn't ask him that. He told my wife that when she took her mother there.

Ms. **Naughton**. All right. Did you ever check your bills from Dr. York——

Judge **Nixon**. Did what?

Ms. **Naughton**. Did you ever check your bills from Dr. York——

Judge **Nixon**. No.

Ms. **Naughton**. —to find out if he had serviced you on May 14th, 1982?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. Why not?

Judge NIXON. They had all of Dr. York's records.

Ms. NAUGHTON. Well, they didn't have the copies of the bills you would have received from Dr. York, did they?

Judge NIXON. I don't know. I don't know what they had at that time.

Ms. NAUGHTON. Well, did you have bills from Dr. York?

Judge NIXON. I don't know.

Ms. NAUGHTON. Did he bill you?

Judge NIXON. I don't know that. If he did——

Ms. NAUGHTON. Did you pay him?

Judge NIXON. If he billed me, I did.

Ms. NAUGHTON. Did he bill you?

Judge NIXON. I don't know.

Ms. NAUGHTON. Now you did testify that you could have been in Hattiesburg for a dental appointment, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. But when asked who your dentist was, you did not give Dr. York's name, did you, in response?

Judge NIXON. Well, at that time, Dr. Fayler, the periodontist, was treating me, and had been for a good while, and he had been recommended by Dr. York. Dr. York sent me t Dr. Fayler.

Ms. NAUGHTON. Judge, is the reason that you did not give Dr. York's name in your testimony was that you feared the Government might go back to the records and check whether or not you had been in Hattiesburg on that date?

Judge NIXON. I think I said that correctly. Dr. York had recommended Dr. Fayler, and sent him to me. They had offices close together.

Ms. NAUGHTON. Shall I repeat my next question?

Judge NIXON. I thought maybe I just said it in an opposite way, but go ahead; yes, ma'am.

Ms. NAUGHTON. My next question is, then: Is the reason that you did not give Dr. York's name at trial was that you feared the Government might go back to the records and check that date?

Judge NIXON. Of course not.

Ms. NAUGHTON. Now still on the question of the investigation, did you ever ask Bud Holmes to find out if Wiley had taped that call from the farm?

Judge NIXON. No. I did not.

Ms. NAUGHTON. Is he lying about that?

Judge NIXON. Yes, ma'am. He's wrong about it. Let me put it that way.

Ms. NAUGHTON. In your meeting with him in the parking lot that day, after the investigation started, is it your testimony that Bud Holmes was going to cover up or lie about the phone call from the farm?

Judge NIXON. He didn't say he was going to lie or cover up, but he certainly suggested to me that there was no phone call made, so I assumed that that was his position.

Ms. NAUGHTON. Did you tell him that you had not told the grand jury about the phone call?

Judge NIXON. He didn't ask me that.

Ms. NAUGHTON. Did he indicate he knew that you had not told the grand jury about it?

Judge NIXON. No.

Ms. NAUGHTON. Did you indicate to him you had not told the grand jury about it?

Judge NIXON. No, but I certainly assume that he knew I had not because I told him if they asked me about it, I was going to tell them.

Ms. NAUGHTON. Well, at that point, Judge, you must have realized that the phone call was becoming an important, or at least an interesting question for the Government, correct?

Judge NIXON. Well, at that point I knew and told him that there was nothing wrong with the phone call as far as I knew. I don't know what he told Wiley Fairchild, but there was nothing wrong with the call. It was not—and that if I was asked, I was going to tell——

Ms. NAUGHTON. That is not my question. My question was: At this point, now Carroll Ingram had gone to Washington, had told them about the phone call; Bud had found that out; he comes to talk to you about it. So the subject in your car in the phone call, correct?

Judge NIXON. Correct.

Ms. NAUGHTON. At that point it's obvious that this is a point that the Government wants to investigate, this phone call, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Why didn't you, at that time, go straight to Reid Weingarten, the Department of Justice attorneys, or the FBI, and tell them about the phone call?

Judge NIXON. Because I figured if they wanted to ask me anything about it, they would invite me back or subpoena me. They had subpoena power, and by that time, my attorney and I recognized and realized that I was the target of the grand jury, the ultimate target, because they'd gotten this old man, Wiley Fairchild, to plead guilty to a crime that he was not guilty of and couldn't have been guilty of, and offered him no time and brought him back before the grand jury and got him to plead guilty to giving me a gratuity.

And something he says now, and said in the trial, he was not guilty of.

Ms. NAUGHTON. Is your answer, then, Judge, that you did not go to the Government because they never subpoenaed you, or, is your answer that you did not go because by now you thought you were a target?

Judge NIXON. Both reasons.

Ms. NAUGHTON. Now you stated in your affidavit for a motion for a reduction of sentence—which by the way, that has not been decided yet, has it?

Judge NIXON. Correct.

Ms. NAUGHTON. So the new judge, Judge Nangle, is free to reduce your sentence, any way he sees fit, correct?

Judge NIXON. No, ma'am. It hasn't been heard.

Ms. NAUGHTON. Right. So he could reduce your sentence as we sit here now, right?

Judge NIXON. Yes.

Ms. NAUGHTON. That is still pending?

Judge NIXON. Yes.

Ms. NAUGHTON. Now, you claimed in that affidavit that you had made a mistake when you testified in the grand jury, by not listening more closely to the question?

Judge NIXON. No, ma'am, I didn't admit that. I said I realized I might not have listened carefully enough to the questions that were asked me.

Ms. NAUGHTON. All right.

Judge NIXON. That's my statement, if you'll read it, and, literally.

Ms. NAUGHTON. Now if you had listened more carefully, would your answer have been different to the question, did you discuss the case with Bud Holmes?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. Would your answer have been different to the question, do you have anything else to add?

Judge NIXON. I don't quite understand your last question.

Ms. NAUGHTON. Well, that is the question that prompted your statement which was the basis of count four. So my question to you is: If you had listened to the questions more carefully, what difference would it have made in your answers?

Judge NIXON. That—that one would not.

Ms. NAUGHTON. All right. Then why did you put that in your affidavit, that you should have listened more carefully to the questions in the grand jury?

Judge NIXON. If you'll go on down and read: "I attempted to give truthful answers to every question that was asked." That's down just in the next sentence. That's what I put in my declaration, and that's correct. And I did.

Ms. NAUGHTON. Excuse me. I am sorry. Are you saying that your answer would not have been different had you listened to the question more carefully?

Judge NIXON. Yes.

Ms. NAUGHTON. Now if I can direct your attention for a minute, Judge, to the canons of judicial conduct. Are you familiar with those?

Judge NIXON. Somewhat; yes, ma'am. I know what they are.

Ms. NAUGHTON. And do you need a copy of them? I have them available.

Judge NIXON. Well, I don't know. It depends on what you're going to ask me about.

Ms. NAUGHTON. Well, I am going to ask you about them.

[Judge Nixon is handed a document.]

Ms. NAUGHTON. I want to ask you, first of all, about canon two, and this is 2(b), and I want to point out the second sentence in (b), and that says, "He should not—and "he" referring to a judge—"should not lend the prestige of his office to advance the private interests of others, nor should he convey, or permit others to convey the impression that they are in a special position to influence him."

"You should not testify, voluntarily, as a character witness."

My question is this, Judge Nixon: By listening to Wiley, and passing on his complaint about the handling of his son's case, weren't you indeed conveying to Wiley Fairchild and to Bud Holmes, that Wiley Fairchild was in a special position to influence you?

Judge NIXON. No, ma'am.

Ms. NAUGHTON. Don't you think that Wiley Fairchild felt he had a little bit influence over you, given that he had put you in a good deal?

Judge NIXON. I don't know what Wiley felt, but I know he didn't.

Ms. NAUGHTON. Well, do you think you put yourself in that position of perhaps causing him to feel he had that influence over you?

Judge NIXON. No.

Ms. NAUGHTON. Do you feel that Wiley Fairchild exploited your judicial position?

Judge NIXON. No.

Ms. NAUGHTON. Judge Nixon, I just want to get your testimony straight on this because now we are talking about a non-criminal matter when we are talking about the canons, correct? So we are not talking about elements of a crime, or proof beyond a reasonable count. Right?

Judge NIXON. All right. I'll accept that.

Ms. NAUGHTON. My question is this: Don't you think that it was causing the appearance of Mr. Fairchild, Wiley Fairchild, being able to influence you, in that he had put you in an excellent oil deal, and you then conveyed his complaint about how his son's drug case was being handled to the prosecuting attorney handling that drug case?

Don't you think, Judge, that that gave the appearance of impropriety?

Judge NIXON. No, I didn't because he didn't ask me to do anything with reference to his son's drug case. Quite the contrary. He said I don't want to do a damn thing to help him, and he didn't ask me to do anything, and I didn't do anything to help his son's drug case, or his son, with reference to the drug case.

Ms. NAUGHTON. You said you had the impression he wanted you to talk to Bud, correct?

Judge NIXON. I had the impression he wanted me to pass on that complaint of blackmail.

Ms. NAUGHTON. And you did talk to Bud about it, correct?

Judge NIXON. I passed it on.

Ms. NAUGHTON. And Wiley knew you talked to Bud?

Judge NIXON. Well, he knew it when Bud called him on the telephone.

Ms. NAUGHTON. And it is your testimony that that did not convey to Wiley that he had some influence over you?

Judge NIXON. No, not with reference to the drug case, or the handling of it; no. No favors for Drew Fairchild, and just as Wiley said, he didn't want to do anything for him, he didn't, and didn't ask me to, and I didn't.

Ms. NAUGHTON. Wiley thanked you, didn't he, for your intervention?

Judge NIXON. He said I'm glad you mentioned that matter.

Ms. NAUGHTON. And did he sound grateful? Was he mad? Was he glad?

Judge **Nixon**. Sounded drunk, or sleepy, or both. He said I'm satisfied. That's all I can do is tell you what he said, Ms. Naughton.

Ms. **Naughton**. Now directing your attention to canon 5(c)(4)(c), and I am sorry but—well, I guess there is a page i- or 1-25. This canon says that, "Neither a judge nor a member of his family residing in his household should accept a gift, request a favor or loan from anyone except as follows."

Then it says: "A judge, or a member of his family residing in his household may accept any other gift, bequest or loan only if the donor is not a party or other person whose interests have come, or are likely to come before him, and if its value exceeds $100 the judge reports it in the same manner as he reports compensation in canon (c)(3)."

Judge, don't you think that given Mr. Fairchild's vast interstate oil investments and dealings, that there was a real likelihood that he might come before your court in a commercial litigation matter?

Judge **Nixon**. Well, there was no gift. Donation.

Ms. **Naughton**. No, no. It says "loan." Look at the language, Judge. It is (4)(c).

Judge **Nixon**. It is true of any bank.

Ms. **Naughton**. Excuse me. The term is "loan," right?

Judge **Nixon**. Yes.

Ms. **Naughton**. All right. So we are talking about a loan and it says you should not take a loan from a donor—who I assume is the originator of the loan—if that person is likely to become involved in litigation before the Federal court.

Judge **Nixon**. No, I don't think that that fits this situation at all.

Ms. **Naughton**. Well, is it not the situation because Wiley would never file a law suit in Federal court?

Judge **Nixon**. I don't know. Anybody could some day do it, but——

Ms. **Naughton**. Well, he is quite a litigious person, isn't he, actually, Judge?

Judge **Nixon**. Thank goodness that's not the law. The judge wouldn't instruct the jury on that. He'd refuse to.

Ms. **Naughton**. I am not asking about that. I am asking about canons of judicial conduct.

Judge **Nixon**. I think I've answered it.

Ms. **Naughton**. And your answer is that this is not applicable?

Judge **Nixon**. Not in my judgment.

Ms. **Naughton**. Why not?

Judge **Nixon**. Because it's not.

Ms. **Naughton**. Why not?

Judge **Nixon**. It doesn't fit this situation.

Ms. **Naughton**. Why not?

Judge **Nixon**. Because it's not; it's not this situation.

Ms. **Naughton**. Why doesn't it fit this situation?

Judge **Nixon**. Well, if that was the case, no bank—you could never make a bank loan.

Ms. **Naughton**. Now we go to canon (5)(c) on 1-24 which is the page before it, headed "Financial Activities." Do you see that?

Judge **Nixon**. Yes.

Ms. **Naughton**. "A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves."

Isn't it true, Judge, that Carroll Ingram was involved in this transaction, and that he is an attorney who has come before you in your court to practice law?

Judge NIXON. I didn't have a financial and business dealing with Carroll Ingram.

Ms. NAUGHTON. Well, he was the middle man in this transaction——

Judge NIXON. It's with Wiley Fairchild. Carroll Ingram couldn't be involved in this kind of deal. I mean, he's not—I had no financial or business deal with Carroll Ingram in this regard.

Ms. NAUGHTON. But Carroll Ingram was the middle man in this transaction, wasn't he?

Judge NIXON. I don't know what you're talking about, a middle man, but I don't think this canon goes to that at all.

Ms. NAUGHTON. Do you think you conveyed the impression to Carroll Ingram, Judge, that he had done you a favor by putting you in the oil deal with Wiley?

Judge NIXON. No. It might have turned out bad and he might have thought just the—I might have thought just the opposition, anyway, but, no, I don't think so.

Ms. NAUGHTON. Either way it is not putting——

Judge NIXON. I don't think so.

Ms. NAUGHTON. —him in a good position, is it?

Judge NIXON. I don't think so.

Ms. NAUGHTON. Finally, Judge, as some of the members have pointed out to you, you were, as we know, convicted on counts three and four, and acquitted on counts one and two of your indictment. Is that correct?

Judge NIXON. Yes.

Ms. NAUGHTON. And you were on the witness stand, I take it, for about two days? Is that right?

Judge NIXON. I would say probably somewhere along, in that—I would say that's approximately correct.

Ms. NAUGHTON. And your testimony was almost exactly the same as you have testified here before this committee, wasn't it?

Judge NIXON. No, ma'am. I don't think it was. It was, in all respects, and bottom line the same, but I don't think I was asked some questions that I should have been asked, and——

Ms. NAUGHTON. Well, what important points do you think——

Judge NIXON. And some other evidence has come out in this committee hearing that didn't come out in my trial.

Ms. NAUGHTON. Well, what I am asking is your testimony——

Judge NIXON. And somebody else's testimony is different than it was at my trial.

Ms. NAUGHTON. Well, let me ask you about your testimony.

Judge NIXON. All right.

Ms. NAUGHTON. What is essentially different about what you told us today than what you said at your trial?

Judge NIXON. I'm talking about the questions, the way the questions were posed to me, not my testimony.

Ms. NAUGHTON. You are saying your answers are the same but the questions are different?

Judge NIXON. I say that the questions asked of me here call for answers that are much more explicit than those that were given at my trial.

Ms. NAUGHTON. Well, maybe we have to break it down, then. Let's talk about Mr. Stewart's questions, not my questions.

Judge NIXON. That's what I'm talking about.

Ms. NAUGHTON. Mr. Stewart's questions. What is it that you testified to in your direct—we will call that your direct testimony—that is different than what you testified to at trial?

Judge NIXON. I didn't say I testified differently. I said the questions were asked in a better manner so that they could elicit my answers much more precisely and definitely, and not go through all the rigmarole and the arguments of the attorneys that took place, and the bantering back and forth, and the aggravation of the jury, and what have you, that took place in my trial. That's what I was referring to, Ms. Naughton.

Ms. NAUGHTON. All right. And here, obviously, neither subcommittee counsel nor your counsel has the opportunity to object, right? So it has been without interference, correct?

Judge NIXON. Yes, that's correct.

Ms. NAUGHTON. Now, do you think that your attorney at trial was competent?

Judge NIXON. I never claimed incompetency of counsel.

Ms. NAUGHTON. Were you happy with how he represented?

Judge NIXON. In certain respects. I made no complaint about that at any time. I've never raised that in my—in any pleading before the court.

Ms. NAUGHTON. Isn't it true that he is a highly respected defense attorney? In fact he defended the Governor of Louisiana, did he not?

Judge NIXON. Yes.

Ms. NAUGHTON. And you had high regard for him, correct?

Judge NIXON. Yes.

Ms. NAUGHTON. Still do?

Judge NIXON. Yes.

Ms. NAUGHTON. Judge Nixon, is it your position that the trial court was wrong in denying you a motion for a new trial based on the new evidence that you say had come forth?

Judge NIXON. Yes, ma'am. I certainly do.

Ms. NAUGHTON. And is it your position that the circuit court was wrong in denying you an appeal?

Judge NIXON. Yes. The—12 of the 15 judges on the Fifth Circuit recused themselves in my case.

Ms. NAUGHTON. Well, I am talking about the first opinion, the April opinion. Do you think that on the substance of the case, in denying your appeal, that the circuit court was wrong?

Judge NIXON. Twelve of the 15 judges on the Fifth Circuit recused themselves on my direct appeal, and a judge from New York came down and sat and wrote the opinion together with two judges on the Fifth Circuit from Texas.

Ms. NAUGHTON. And you think they were wrong?

Judge Nixon. Yes, ma'am, I do, with all due respect to the court, and also, there was a different standard on appeal than there is here, and there is in the 2255, Ms. Naughton. And on appeal of criminal conviction, the court's bound to take all of the evidence that could be favorable to the Government, and view it in the light most favorable to the Government on an appeal from a conviction, and consider it as true.

Ms. Naughton. And likewise, the Government has no appeal right when a defendant is acquitted, right?

Judge Nixon. Right.

Ms. Naughton. Do you feel——

Judge Nixon. That's not the point, though. I don't know what that's got to do with it.

Ms. Naughton. Did you feel that the Supreme Court was wrong when it denied certiorari in your case?

Judge Nixon. I felt that the Supreme Court should have granted certiorari, yes, ma'am, with all due respect to the Supreme Court. I don't think a lawyer, or a judge has to agree with an appellate court, except to follow it, the law, of course.

Ms. Naughton. And do you think that the 12 men and women——

Judge Nixon. And the denial of certiorari does not mean that the Supreme Court agreed with the opinion below, either, you know, necessarily.

Ms. Naughton. But doesn't it mean that it agreed with the result, that is, the denial?

Judge Nixon. No, ma'am, it does not.

Ms. Naughton. Well, are you saying——

Judge Nixon. I think that's basic.

Ms. Naughton. Are you saying that the Supreme Court did not agree with the result reached by the Fifth Circuit?

Judge Nixon. I don't know what—I don't know, one way or the other. I can't say they didn't, and you can't say they did, is the way I see it. Neither one of us knows.

Ms. Naughton. All right. They refused review of this case, correct?

Judge Nixon. Yes, ma'am. Yes.

Ms. Naughton. And do you think that those 12 men and women who sat on your jury and deliberated for nearly two days, and decided that you were not guilty on counts one and two but guilty on three and four—do you think they were wrong?

Judge Nixon. Yes, ma'am. The foreman, as we understood, when he went on television after my trial, said he had sat on 17 juries, and he had a history of hating judges, and had a controversy with a judge, and, yes, ma'am, I think they were wrong.

Ms. Naughton. Did you provide that juror in your motion for a new trial and cross-examine him?

Judge Nixon. No, ma'am.

Ms. Naughton. Why not?

Judge Nixon. I didn't think it would do any good.

Ms. Naughton. May I have a moment.

[Pause.]

Ms. Naughton. Thank you very much for you indulgence, Mr. Chairman. I have no further questions.

Mr. **Edwards**. Thank you, Ms. Naughton. I think it is only fair that Mr. Stewart or Mr. Holleman ask some questions.

Mr. **Stewart**. Thank you, Mr. Chairman. I will attempt to be brief. With your indulgence, one second.

Judge Nixon, let me just ask you, to follow up on a couple of questions Ms. Naughton just asked, about those 12 men and women on the jury. Did they hear Bud Holmes testify that you told him you did not want to hear about the case, and you did not want him to tell you about Drew Fairchild's case?

Judge **Nixon**. No, sir. This is the first time he's testified to that, here, in this committee hearing, subcommittee hearing.

Mr. **Stewart**. Did they hear Wiley Fairchild testify that you had had your conversation, and that the deal, that the agreement on the mineral investment had been orally agreed to in early 1980, or late 1979?

Judge **Nixon**. No, sir.

Mr. **Stewart**. In fact at trial, he testified initially, that that had happened after the drug bust of his son, isn't that right?

Judge **Nixon**. That's correct.

Mr. **Stewart**. And at this point, now, he has corrected that, hasn't he?

Judge **Nixon**. Yes. He has.

Mr. **Stewart**. Did they have an opportunity to know that Wiley Fairchild had a script that had been prepared by the prosecutor for his testimony?

Judge **Nixon**. No, sir.

Mr. **Stewart**. Did they know that Wiley Fairchild had been promised a pardon, or had been led to believe that he would receive a pardon if the prosecutor was pleased with his testimony?

Judge **Nixon**. No.

Mr. **Stewart**. In your opinion, was the jury at that time distracted by the gratuity count as well?

Judge **Nixon**. Absolutely. The gratuity count was thrown in, in my judgment, to taint the entire proceeding and make it easy to get a verdict of guilty on perjury charges.

Mr. **Stewart**. In your opinion, without those elements, and any other elements I may have overlooked, that we have just covered, do you think a jury would have come back with a guilty verdict in your case?

Judge **Nixon**. No. I don't.

Mr. **Stewart**. Let me just ask a quick question on the Supreme Court review issue which Ms. Naughton mentioned.

Isn't it your understanding—which I think you were stating just now—that a denial of certiorari by the Supreme Court indicates absolutely no opinion on the merits of the case, but simply refers to the determination by the Supreme Court that they do not want to hear the case?

Judge **Nixon**. Yes, and I think that's been made clear by the Supreme Court many times.

Mr. **Stewart**. Mr. Chairman, in view of the hour I will suspend at this point. Thank you.

Mr. **Edwards**. Mr. DeWine.

Mr. **DeWine**. No questions, Mr. Chairman.

Mr. **Edwards**. If there are no more questions we will bring this hearing to a close. We do not have any more witnesses in mind, Mr. Stewart. I do not believe that you have any more in mind, either.

We will go on recess this Thursday, and come back on the 26th of July, which is a Tuesday, and until then, we invite any comments, or information from you.

Mr. **Stewart**. I appreciate that. Mr. Chairman, that is what I was about to ask, so you have anticipated my question. We will probably submit a few more items.

Mr. **Edwards**. Very good. We have received Mr. Stewart's letter of July 5th which enclosed copies of three additional exhibits, XN-44, XN-45, XN-46. I ask unanimous consent that they be included in the record at this point. Without objection, so ordered.

Mr. **Edwards**. If there is no further discussion, we thank all of you for your patience.

Mr. **Holleman**. Mr. Chairman, this is my first appearance before a Congressional committee, and I want to express my appreciation to the chair, and to counsel for the committee. Everyone has been most kind to this lawyer from the Deep South and I am honored to have been here, and been able to participate here. I thank you for the courtesy you have shown me.

Mr. **Edwards**. We appreciate that. Thank you very much.

[Whereupon at 6:58 p.m., the subcommittee was recessed, subject to the call of the Chair.]

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